

No. 2616

United States
Circuit Court of Appeals

For the Ninth Circuit

STIMSON MILL COMPANY, A CORPORATION, CLAIMANT OF THE
tow boat "Tillicum," her engines, boilers, tackle, apparel
and furniture,

Appellant,

vs.

THE INLAND NAVIGATION COMPANY, A CORPORATION, CLAIMANT
of the steamer "Rosalie," her tackle, apparel and furni-
ture,

Appellee.

Apostles

Filed

JUN 22 1915

F. D. Monckton,
Clerk.

Upon Appeal from the United States District Court for the Western
District of Washington, Northern Division.

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In the District Court of the United States for the Western
District of Washington, Northern Division.

No. 4730.

THE INLAND NAVIGATION COMPANY, A CORPORATION, LIBELANT,

vs.

THE TOW BOAT "TILlicum," ETC., RESPONDENT.

NAMES AND ADDRESSES OF COUNSEL

IRA BRONSON, Esq., Proctor for Libelant and Appellee,
614 Colman Building, Seattle, Washington.

J. S. ROBINSON, Esq., Proctor for Libelant and Appellee,
614 Colman Building, Seattle, Washington.

H. B. JONES, Esq., Proctor for Libelant and Appellee,
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E. C. HUGHES, Esq., Proctor for Claimant and Appellant,
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MAURICE McMICKEN, Esq., Proctor for Claimant and Ap-
pellant,
661 Colman Building, Seattle, Washington.

W. T. DOVELL, Esq., Proctor for Claimant and Appellant,
661 Colman Building, Seattle, Washington.

H. J. RAMSEY, Esq., Proctor for Claimant and Appellant,
661 Colman Building, Seattle, Washington.

STATEMENT.

Time of commencement of suit: October 5, 1911.

Number of Cause in Lower Court and Names of Parties to Suit: Cause No. 4730. The Inland Navigation Company, a corporation, Libelant, vs. The Tow Boat "Tillicum," her engines, boilers, etc., Respondent, Stimson Mill Company, a corporation, Claimant and Cross Libelant.

Several dates at which the respective pleadings were filed: Libel filed October 5, 1911. Claim filed October 6, 1911. Answer and Cross Libel filed April 13, 1912. Claim on Cross Libel filed April 16, 1912. Answer to Cross Libel filed January 24, 1913.

Issuance of Process and Service thereof: Monition and attachment issued on Libel October 5, 1911; Tow Boat "Tillicum," her engines, etc., attached on said monition October 6, 1911; monition returned and filed October 6, 1911. Bond in the sum of \$10,000 for release of vessel filed October 6, 1911, and vessel released to claimant. Monition and attachment issued on Cross Libel April 13, 1912. Steamer "Rosalie," etc., attached on said monition April 16, 1912; monition returned and filed April 16, 1912. Bond in the sum of \$2,000 for release of said vessel filed April 16, 1912, and vessel released to claimant.

Reference to Commissioner: December 31, 1912, cause referred to commissioner to take testimony and return the same into Court. August 18, 1914, said testimony having been taken was duly filed in said District Court by said commissioner. September 8, 1914, cause re-referred to commissioner to take further testimony and return the same into Court. September 17, 1914, said further testimony having been taken was duly filed in said District Court by said commissioner.

Time of Trial: Thereafter said cause was duly submitted on briefs on the merits, the same being heard upon the testimony so taken before and reported by said commissioner, the same being submitted to Honorable Jeremiah Neterer, District Judge, on October 16, 1914.

Memorandum decision filed October 22, 1914.

Final decree filed October 26, 1914.

Notice of appeal filed April 22, 1915.

Citation issued and served April 22, 1915.

Assignments of error filed June 7, 1915.

Bond for costs on appeal filed April 22, 1915.

In the District Court of the United States for the Western
District of Washington, Northern Division.

THE INLAND NAVIGATION COMPANY, A CORPORATION,	Libelant,	} No. 4730
vs.		
THE TOW BOAT "TILlicum," HER ENGINES, BOILERS, tackle, apparel and furniture,	Respondent.	

Libel.

The libel of the plaintiff, The Inland Navigation Company, a corporation, organized, created and existing under and by virtue of the laws of the State of Oregon, against the Tow Boat "Tillicum," her engines, tackle, boilers, apparel and furniture, and against all persons lawfully intervening for their interest in the same in a cause of collision, civil and maritime, alleges as follows:

I.

That at all times hereinafter mentioned, the above mentioned libelant was, and ever since has been, and still is, a corporation, organized, created and existing under and by virtue of the laws of the State of Oregon; that during all times hereinafter mentioned, said libelant was the owner of that certain steam vessel called the "Rosalie" with her engines, boilers, tackle, apparel and furniture, which said vessel was used and operated in transporting passengers and freight between the City of Seattle, State of Washington, and other ports and places upon the waters of Puget Sound.

II.

That said Steamship "Rosalie" was a wooden vessel of 318.51 gross and 226.63 net tonnage, and at the time of her collision hereinafter mentioned, said vessel was stout, staunch and in all respects well manned, tackled, apparelled and appointed, and had the usual and necessary complement of officers and crew.

III.

That the steam Tow Boat "Tillicum," at all times hereinafter mentioned was a wooden vessel of about 87 feet in length, and her master was, and is one.....

IV.

That on the 8th day of April, 1911, while said Steamship Rosalie was proceeding on her regular trip from the port of Bellingham in the State of Washington, on a voyage to the

port of Seattle, in the State of Washington, with a cargo of freight and passengers, and at the hour of about 5:10 A. M. the said steamship being about one mile south of the West Point Lighthouse, and while a dense fog hung over the waters of Puget Sound, and while said vessel was proceeding therein under slow bell and regularly sounding her fog signals as required by the regulations for avoiding collisions, and every precaution being taken to avoid collisions up to the time of the collision hereinafter mentioned, the fog signals of a vessel were heard some distance directly ahead; thereupon the engines of the *Rosalie* were stopped and alarm signals sounded. Soon thereafter the tug boat *Tillicum*, with an unknown scow in tow appeared through the fog at a short distance from the *Rosalie* and heading in a course across the *Rosalie*'s bow. The master of the *Rosalie* at once ordered his engines full speed astern, which checked all forward movement of the *Rosalie*, but before she could gather sternway, the scow towed by the *Tillicum* collided with the *Rosalie*, breaking the stem of said *Rosalie*.

V.

The libelant further alleges that the collision was in no way due to any fault on the part of the *Rosalie*, which was carefully operated, nor to her officers or crew, but was due wholly to fault on the part of the *Tillicum*, in that she was navigated at too great speed in a fog; in that she did not give proper heed to the fog signals of the *Rosalie*; in that she did not stop or reverse her engines in time as she should have done, and in that she was in other respects improperly and carelessly navigated.

VI.

The libelant further alleges that by reason of the breaking of the stem of said *Rosalie*, and on account of the expenses and demurrage arising out of said collision, it has been damaged in a sum of Five Thousand Three Hundred Thirty-nine and 72/100 (\$5,339.72) Dollars.

VII.

That said *Tillicum* is now lying in Seattle harbor, near Ballard, and within the jurisdiction of this court.

VIII.

That all and singular the premises are true.

Wherefore, libelant prays that process in due form of law, according to the practices of this honorable court, may issue against the steam tow boat *Tillicum*, her engines, boilers,

tackle, apparel and furniture; and that all persons having, or pretending to have any right, title or interest therein may be cited to appear and answer all and singular, the matters aforesaid; and that this honorable court would be pleased to decree to the libelant the payment of the said damages, with costs, and that the said vessel may be condemned and sold to pay the same, and that the libelant may have such other further relief as in law and justice it may be entitled to receive.

THE INLAND NAVIGATION COMPANY,
By JOSHUA GREEN, *President.*
IRA BRONSON, *Proctor for Libelant.*

THE UNITED STATES OF AMERICA,

State of Washington, County of King, ss:

On this 5th day of October, 1911, before me, at Seattle, personally appeared Joshua Green, president of the within named Inland Navigation Company, and made oath that he had read the foregoing libel, and knows the contents thereof and that the same is true as to his own knowledge, except as to those matters and things stated to be on his own information and belief, and to those matters and things, he believes them to be true.

JOSHUA GREEN.

Subscribed and sworn to on the last day above mentioned before me.

[SEAL]

ROBERT W. REID,
*Notary Public in and for the State of
Washington, residing at Seattle.*

(Endorsed:) Libel. Filed in the U. S. District Court, Western Dist. of Washington, Oct. 5, 1911. A. W. Engle, Clerk. By F. A. Simpkins, Deputy.

In the United States District Court for the Western District
of Washington, Northern Division.

THE INLAND NAVIGATION COMPANY, A CORPORATION,	}	Libelant,	No. 4730
vs.			
THE TOW BOAT "TILlicum," HER ENGINES, ETC.			

In Admiralty.

To the Honorable C. H. Hanford, Judge of said Court:

Stimson Mill Company, a corporation, owners of the said tow boat "Tillicum," her tackle, apparel and furniture, inter-

vening for its interest in the said vessel, her tackle, etc., appear before this Honorable Court and claim the said vessel, her tackle, etc., and state that it is the true and bona fide owner thereof, and that no other person is the owner thereof; wherefore it prays to be admitted to defend accordingly, and that the said Court will be pleased to decree a restitution of the same to it and otherwise right and justice to administer in the premises.

STIMSON MILL COMPANY,
By J. F. IVES, *Its Manager*.

Sworn to October 6, 1911, before me.

[NOTARIAL SEAL]

H. J. RAMSEY,
*Notary Public in and for the State of
Washington, residing at Seattle.*
HUGHES, McMICKEN, DOVELL & RAMSEY,
Proctors for Claimant.

(Endorsed:) Claim of Stimson Mill Company. Filed in the U. S. District Court, Western Dist. of Washington. Oct. 6, 1911. A. W. Engle, Clerk. By F. A. Simpkins, Dep.

In the United States District Court for the Western District
of Washington.

KNOW ALL MEN BY THESE PRESENTS

That we, Stimson Mill Company, a corporation, as principal, and C. D. Stimson and Thos. D. Stimson, as sureties, are held and firmly bound unto Joseph R. H. Jacoby, Esquire, *Marshal of the United States*, for the Western District of Washington, in the sum of Ten Thousand (\$10,000.00) Dollars, to be paid to the said Marshal, for the payment of which, well and truly to be made, we each bind ourselves, and each of our heirs, executors and administrators, jointly and severally, firmly by these presents. Sealed with our seals and dated the 6th day of October, in the year of our Lord one thousand nine hundred and eleven,

WHEREAS, a Libel was filed in the District Court of the United States for the Western District of Washington, Northern Division, on the 5th day of October, in the year of our Lord one thousand nine hundred and eleven, by The Inland Navigation Company, a corporation, Libelant, against the Towboat "Tillicum", her engines, etc., for the sum of Five Thousand Three Hundred Thirty-nine and 72-100 Dollars, on which process of attachment has issued, and the said

Towboat "Tillicum" is in custody of the said Marshal under the said attachment, and WHEREAS, Stimson Mill Company, a corporation, has applied for a discharge of said Towboat "Tillicum" from the custody of the said Marshal, and has filed a claim claiming the said Towboat "Tillicum," her engines, etc., and has filed a stipulation for the claimant's costs, pursuant to the rules and practice of the said Court:

NOW, THEREFORE, the condition of this obligation is such, that if the above bounden Stimson Mill Company shall abide by and answer the decree of this Court, or in case of appeal, the decree of appellate court, in such cause, then this obligation shall be void, otherwise the same shall be and remain in full force and virtue.

STIMSON MILL COMPANY, [SEAL]

By J. F. IVES, [SEAL]

Its Manager.

C. D. STIMSON. [SEAL]

THOS. D. STIMSON. [SEAL]

Signed, acknowledged and delivered before me this 6th day of October, 1911.

[NOTARIAL SEAL]

H. J. RAMSEY,

Notary Public in and for the State of

Washington, residing at Seattle.

UNITED STATES OF AMERICA,

} ss.

WESTERN DISTRICT OF WASHINGTON.}

C. D. Stimson and Thos. D. Stimson, being duly sworn, deposes and says each for himself, that he is worth the sum of Twenty Thousand Dollars, over and above all his just debts and liabilities, and that he is a resident of said District.

C. D. STIMSON.

THOS. D. STIMSON.

Sworn to before me this 6th day of October, 1911.

[NOTARIAL SEAL]

H. J. RAMSEY,

Notary Public in and for the State of

Washington, residing at Seattle.

I approve of the sufficiency of the sureties to the within bond.

Dated at Seattle, Wash., this 6th day of October, 1911.

C. H. HANFORD, *Judge.*

Notice required by Rule 28 hereby waived.

IRA BRONSON, *Proctor for Libellant.*

(Endorsed:) Bond to U. S. Marshal under Section 941 of the Revised Statutes of the United States. Filed in the U. S. District Court, Western Dist. of Washington. Oct. 6, 1911. A. W. Engle, Clerk. By F. A. Simpkins, Dep.

In the District Court of the United States for the Western District of Washington, Northern Division.

THE INLAND NAVIGATION COMPANY, A CORPORATION,	} Libelant,	} No. 4730
<i>vs.</i>		
THE TOW BOAT "TILlicum", HER ENGINES, BOILERS, etc.,	} Respondent,	
STIMSON MILL COMPANY, A CORPORATION, CLAIMANT.		

Answer and Cross-libel.

The answer of Stimson Mill Company, a corporation, claimant of the Tug Boat "Tillicum", her engines, boilers, etc., to the libel of The Inland Navigation Company against the Tow Boat "Tillicum", alleges as follows:

I.

That it admits the allegations in Paragraph I of said libel.

II.

That it admits that said steamship "Rosalie" was a wooden vessel of 318.51 gross and 226.63 net tonnage, but as to each and every of the remaining allegations in Paragraph II of said libel it denies any knowledge or information sufficient to form a belief.

III.

That it admits the allegations in Paragraph III of said libel.

IV.

Answering Paragraph IV of said libel, it admits that on the 8th of April, 1911, while said steamship "Rosalie" was proceeding on her regular trip from the Port of Bellingham to the Port of Seattle, in the State of Washington, at about the hour of 5:15 A. M., and when between a mile and a mile and a quarter south of West Point Lighthouse, a collision occurred between the said steamship "Rosalie" and a scow towed alongside the steam tug "Tillicum", and it admits

that for some time prior thereto the officers navigating the said steamship "Rosalie" heard the fog signals of said tug "Tillicum"; but it denies each and every of the remaining allegations of said Paragraph IV, and avers that the truth in the premises is as hereinafter in claimant's affirmative answer and cross-libel set forth.

V.

That it denies each and every allegation in Paragraph V of said libel.

VI.

Answering Paragraph VI of said libel, this claimant denies that it has any knowledge or information as to the nature or extent of the injury, or damages and demurrage arising out of said collision, and it denies that said libelant has been damaged in the sum of Five Thousand Three Hundred Thirty-nine and Seventy-two hundredths (\$5,339.72) Dollars, or any other sum.

VII.

Claimant denies each and every allegation of the Eighth Paragraph of said libel.

Further answering, and by way of cross-libel herein, this claimant avers:

I.

That it is a corporation organized and existing under and by virtue of the laws of the State of Washington, and is the owner of the steam tug "Tillicum", of the length of 87 feet 6 inches, of the breadth of 19 feet 6 inches, and a draft of 10 feet 6 inches, and of 116 tons gross tonnage; and that it is also the owner of a barge known as Stimson Barge No. 8, of the length of about 100 feet and a breadth of 26 feet.

II.

That at 4:15 o'clock A. M., on the morning of April 8, 1911, the said steam tug "Tillicum", with the said Barge No. 8 made fast upon its port side, its bow extending twenty or thirty feet forward of the bow of the said "Tillicum", said barge having on board two oil tank cars, loaded with oil, left the Standard Oil Dock, in the Port of Seattle, and proceeded on its way to make and pass West Point Light; that at said time, and at all times hereinafter mentioned, a dense fog existed over that portion of Puget Sound through which said steam tug proceeded.

That said steam tug proceeded with its tow at a speed of about five knots an hour until it reached a point in the

vicinity of Four Mile Rock, when it reduced its speed to about three knots an hour, for the purpose of locating its position by the echoes of its fog whistle from Magnolia Bluff, and, obtaining such echoes, continued at said speed of about three knots an hour, in order that when the said echoes ceased it might have its proper position from which to change its course so as to pass West Point Lighthouse; and that at all times after leaving said dock and until immediately prior to the collision hereinafter mentioned, it sounded its fog whistle at intervals of a minute or less, as required by law.

III.

That at all the times herein mentioned, the said steam tug was duly and properly equipped and manned, as required by law, and that the Master of said tug, Captain E. N. Charlesworth, and the Mate of said tug, A. W. Anderson, were both duly licensed officers, and were on lookout in the pilot house of said tug boat and engaged in the navigation of said steam tug and her tow; that when between a mile and a mile and a quarter south of West Point Light, and after having received echoes of its fog whistle from the bluff for about ten minutes, said captain and said mate heard the echo of its fog whistle from some object in the fog directly ahead; that though no fog whistle or other warning had been previously given, the said master determined that, from the location of said echo, he was approaching a vessel ahead, and thereupon immediately signaled his engineer to stop the engine; and that a few seconds later the said captain and mate saw through the fog the glimmer of lights which they afterwards determined to be the range lights of the "Rosalie", directly ahead, and immediately signaled the engineer to reverse the engines of said steam tug full speed astern and sounded the danger signal by giving four blasts of the whistle of said tug, which were at once answered by four blasts from the whistle of the steamship "Rosalie", whose lights were then distinctly appearing in the fog and bearing directly down upon said tug boat; that the captain of said tug boat thereupon gave three blasts of his whistle, to inform said steamship "Rosalie" that his engines were going full speed astern; that by reason of said tow being on its port side said tug boat, in going astern, swung its bow to starboard; that in a few seconds thereafter, and after said steam tug and her tow had begun to make sternway, the steamship "Rosalie" approaching head on, or nearly so, struck the bow of said Barge No. 8, causing damage to said barge and cargo,

and in the delay and demurrage occasioned to said tug in the sum of Six Hundred (\$600.00) Dollars

IV.

That the said collision was caused and the said damage incurred by reason of the failure and neglect of said steamship "Rosalie" to sound fog signals, as required by law, and by reason of said steamship "Rosalie" being operated in said fog at an excessive and unlawful rate of speed, and by reason of the failure and neglect of the officers in command of said steamship "Rosalie" to observe the fog signals of the steam tug "Tillicum" and to exercise proper seamanship in avoiding the collision with said tug and her tow.

V.

That the said steamship "Rosalie" is now within the jurisdiction of this court, and that all and singular the premises are true.

WHEREFORE, this cross-libelant prays that process, in due form of law and according to the practice of this court, may issue against said steamship "Rosalie", her engines, boilers, tackle, apparel and furniture, and that all persons having or claiming any right, title or interest therein may be cited to appear and answer all and singular the matters in this cross-libel set forth, and that this honorable court will be pleased to decree to cross-libelant herein the payment of said damages and costs, and that said steamship "Rosalie" may be condemned and sold to pay the same, and that this cross-libelant may have such other and further relief as in law and justice it may be entitled to receive.

STIMSON MILL COMPANY,
By J. F. IVES, *Manager.*

UNITED STATES OF AMERICA, }
STATE OF WASHINGTON, } ss.
COUNTY OF KING. }

On this 9th day of April, A. D. 1912, before me, at Seattle, personally appeared J. F. Ives, Manager of the Stimson Mill Company, and made oath that he has read the foregoing answer and cross-libel, that he knows the contents thereof, and that the same are true, as he verily believes.

J. F. IVES.

Subscribed and sworn to before me, this 9th day of April, 1912.

[SEAL]

H. A. OWEN, JR.,
*Notary Public in and for the State of
of Washington, residing at Seattle.*

Copy of within answer and cross-libel received, and due service of same acknowledged this 9th day of April, 1912.

IRA BRONSON, *Proctor for Libelant.*

Endorsed: Answer and Cross Libel. Filed in the U. S. District Court, Western Dist. of Washington, Apr. 13, 1912. A. W. Engle, Clerk. By S., Deputy.

In the District Court of the United States for the Western District of Washington, Northern Division.

THE INLAND NAVIGATION COMPANY, A CORPORATION,	}	Libelant,
		<i>vs.</i>
THE TOW BOAT "TILlicum", HER ENGINES, BOILERS,	}	No. 4730
etc.,		
STIMSON MILL COMPANY, A CORPORATION,		
		Respondent,
		Claimant and Cross-Libelant.

Claim by President of Owner.

To the Honorable Judges of the District Court of the United States for the Western District of Washington, Northern Division:

Now comes Joshua Green, and respectfully states and represents that he is the President of The Inland Navigation Company, a corporation, duly created and existing under and by virtue of the laws of the State of Oregon, and duly authorized to do business in the State of Washington, with a principal office and place of business in the City of Seattle, King County, Washington; that said corporation is the sole owner of the Steamship "Rosalie", her engines, boiler, machinery, sails, boats, tackle, apparel and furniture, and that no other person or corporation has any interest therein as owner. And the said Joshua Green, as such President claims the said steamship and property in behalf of the said corporation, and prays that the same may be delivered to him for said owner.

JOSHUA GREEN,

For The Inland Navigation Company.

UNITED STATES OF AMERICA,	}	ss.
STATE OF WASHINGTON,		
COUNTY OF KING.		

JOSHUA GREEN, being first duly sworn, on his oath, says that the facts stated in the foregoing claim subscribed by him are true.

JOSHUA GREEN.

Subscribed in my presence and sworn to before me this 16th day of April, 1912, by said Joshua Green.

[SEAL]

ROBERT W. REID,
*Notary Public in and for the State of
Washington, residing at Seattle.*

Endorsed: Claim by President of Owner. Filed in the U. S. District Court, Western Dist. of Washington. Apr. 16, 1912. A. W. Engle, Clerk. By S., Deputy.

In the District Court of the United States for the Western
District of Washington, Northern Division.

THE INLAND NAVIGATION COMPANY, A CORPORATION,	}	Libelant,
		<i>vs.</i>
THE TOW BOAT "TILlicum", HER ENGINES, BOILERS,	}	No. 4730
etc.,		
STIMSON MILL COMPANY, A CORPORATION,		Respondent,
		Claimant and Cross-Libelant.

Bond to Obtain Release of Ship.

KNOW ALL MEN BY THESE PRESENTS:

That we, The Inland Navigation Company, a corporation organized and existing under and by virtue of the laws of the State of Oregon, and duly authorized to do business in the State of Washington, having a principal office and place of business at the City of Seattle, King County, Washington, as Principal, and Joshua Green, residing at Seattle, Washington, and Frank E. Burns, residing at Seattle, Washington, as sureties, are held and firmly bound unto J. R. H. Jacoby, Marshal of the United States for the Western District of Washington, Northern Division, in the sum of Two Thousand Dollars, to be paid to the said J. R. H. Jacoby, Marshal of the United States for the District aforesaid, his successors and assigns, for the payment of which well and truly to be made, we bind ourselves, and each of us, our and each of our, heirs, executors, administrators, successors and assigns, jointly and severally, firmly by these presents.

Sealed with our seals and dated this 11th day of April, 1912.

Whereas, a cross-libel has been filed in the District Court of the United States for the Western District of Washington,

Northern Division, on the 16th day of April, 1912, by Stimson Mill Company, a corporation, claimant and cross-libelant in the above entitled cause, against the Steamer "Rosalie," her tackle, apparel and furniture for the sum of Six Hundred Dollars, on which process of attachment has been issued, and the said ship, her tackle, apparel and furniture, is in custody of the Marshal under the said attachment, and the said The Inland Navigation Company, claimant of the said ship, has applied for the discharge of said ship from the custody of the Marshal, and has filed a claim claiming the said ship as owner, and has filed a stipulation for the claimant's costs pursuant to the rules and practice of the said court;

Now, Therefore, the condition is such that if the above bounden, The Inland Navigation Company, a corporation, its successors and assigns, shall abide by and perform the decree of this court, then this obligation shall be void, other wise the same shall be and remain in full force and virtue.

THE INLAND NAVIGATION COMPANY,
By JOSHUA GREEN, *President*.

ATTEST: C. H. J. STOLTENBERG, *Secretary*.
JOSHUA GREEN.
FRANK E. BURNS.

Sealed and delivered, taken and acknowledged this 16th day of April, 1912, before me.

[SEAL]

ROBERT W. REID,
*Notary Public in and for the State of
Washington, residing at Seattle.*

UNITED STATES OF AMERICA, }
STATE OF WASHINGTON, } ss.
COUNTY OF KING. }

JOSHUA GREEN and FRANK E. BURNS, being duly sworn, each deposes and says: That he resides as above set forth, and that he is worth the sum of Four Thousand Dollars over and above all his just debts and liabilities.

JOSHUA GREEN.
FRANK E. BURNS.

Subscribed and sworn to before me this 16th day of April, 1912.

[SEAL]

ROBERT W. REID,
*Notary Public in and for the State of
Washington, residing at Seattle.*

I approve of the sufficiency of the sureties to the within bond.

C. H. HANFORD, *Judge.*
IRA BRONSON, *Proctor for Claimant.*

Endorsed: Bond to Obtain Release of Ship. Filed in the U. S. District Court, Western Dist. of Washington. Apr. 16, 1912. A. W. Engle, Clerk. By S., Deputy.

In the District Court of the United States for the Western
District of Washington, Northern Division.

THE INLAND NAVIGATION COMPANY, A CORPORATION,	}	No. 4730
Libelant,		
<i>vs.</i>		
THE TOW BOAT "TILlicum", HER ENGINES, BOILERS,	}	
etc.,		
STIMSON MILL COMPANY, A CORPORATION,		
Claimant and Cross-Libelant.		

Answer to Cross-Libel.

The answer of the Inland Navigation Company, a corporation, Libelant, to the cross-libel of the Stimson Mill Company, a corporation, Claimant and Cross-libelant in the above entitled cause admits, denies and alleges as follows:

I.

That it admits the allegations in Paragraph One of said cross-libel.

II.

Answering Paragraph Two of said cross-libel it admits that a dense fog hung over Seattle harbor on the morning of April 8th, 1911; specifically denies that the steam tug "Tillicum" sounded its fog whistle prior to the collision as required by law; but as to the other allegations therein contained it has not sufficient knowledge or information to form a belief as to the truth or falsity thereof, and therefore denies the same.

III.

Answering Paragraph Three of said cross-libel, it admits that the "Rosalie" sounded four blasts of a whistle, and specifically denies that no fog whistle had been previously

given; denies that the captain of the tug boat gave three blasts of his whistle to indicate that his engines were going full speed astern; and denies that the said tug boat swung its bow to starboard, and denies that the tug and tow had begun to make sternway when the collision occurred, but as to the other allegations therein contained it has not sufficient knowledge or information to form a belief as to the truth or falsity thereof, and therefore denies the same.

IV.

Answering Paragraph Four of said cross-libel the libelant denies every allegation therein contained.

WHEREFORE, the libelant prays that the cross-libelant take nothing in this suit, but that the libelant be given the relief prayed for in its libel and such further relief as in law and justice it may be entitled to receive.

IRA BRONSON, *Proctor for Libelant.*

STATE OF WASHINGTON, }
COUNTY OF KING. } ss.

JOSHUA GREEN, being first duly sworn, on oath deposes and says: That he is the President of the Inland Navigation Company, a corporation, libelant in the above entitled cause; that he has read the foregoing answer to cross-libel, knows the contents thereof, and believes the same to be true.

JOSHUA GREEN.

Subscribed and sworn to before me this 14th day of January, 1913.

[SEAL]

W. L. GRILL,
*Notary Public in and for the State of
of Washington, residing at Seattle.*

Due service of a copy hereof admitted this 14th day of January, 1913.

HUGHES, McMICKEN, DOVELL & RAMSEY,
Proctors for Cross Libelant.

Endorsed: Answer to Cross Libel. Filed in the U. S. District Court, Western Dist. of Washington. Jan. 24, 1913. Frank L. Crosby, Clerk. By E. M. L., Deputy.

In the District Court of the United States for the Western
District of Washington, Northern Division.

THE INLAND NAVIGATION COMPANY, A CORPORATION,	}	No. 4730	
Libelant,			
<i>vs.</i>			
THE TOW BOAT "TILlicum," HER TACKLE, ENGINES,	}		
apparel, and furniture,			Respondent,
STIMSON MILL COMPANY, A CORPORATION,			Claimant and Cross-Libelant.

In Admiralty

Order of Reference.

This cause coming regularly on for hearing on the motion of the libelant for an order of reference referring the above entitled matter to a commissioner for the taking of testimony herein; and it appearing to the court that the libelant has heretofore filed its libel against the Tow Boat "Tillicum," and that thereafter upon the seizure of said boat, the Stimson Mill Company, a corporation, appeared herein as claimant and cross-libelant and filed its answer herein denying the allegations of the libel; and the court being fully advised in the premises, it is hereby ordered, adjudged and decreed that the above entitled matter be, and the same is hereby referred to A. C. Bowman, as a commissioner for the taking of the testimony herein, with directions to take the testimony herein and return the same to this court.

Done in open court this 31st day of December, 1912.

CLINTON W. HOWARD, *Judge.*
IRA BRONSON *for Libelant.*

O. K.
H. McM. D. & R.

(Endorsed:) Order of Reference. Filed in the U. S. District Court, Western Dist. of Washington. Dec. 30, 1912. Frank L. Crosby, Clerk. By E. M. L., Deputy.

In the District Court of the United States for the Western
District of Washington, Northern Division.

THE INLAND NAVIGATION COMPANY, a corporation,	Libelant,	} No. 4730
vs.		
THE TOW BOAT "TILlicum," ETC.,	Respondent,	
STIMSON MILL COMPANY,	Claimant,	
STIMSON MILL COMPANY,	Cross-Libelant,	
vs.		
STEAMSHIP "ROSALIE", ETC., Respondent,		
THE INLAND NAVIGATION COMPANY, Claimant.		

To the HON. E. E. CUSHMAN, Judge of the above entitled
Court:

Pursuant to the order of reference herein the libelant appeared by Mr. J. S. Robinson, one of its proctors, and the claimant and cross-libelant appeared by Mr. E. C. Hughes, one of its proctors; thereupon the following testimony was offered and proceedings had:

Libelant's Testimony.

L. BOUGOJARD, a witness called on behalf of the libelant, being duly sworn, testified as follows:

Q. (Mr. Robinson). What is your occupation?

A. I am now on the "Weary Willie."

Q. Were you employed on the steamship Rosalie on the 8th of April, 1911, when she was in collision with a scow and tug?

A. Yes sir.

Q. Were you on duty at the time?

A. Yes sir.

Q. What were you doing?

A. I was lookout at the time, on the bow.

Q. On the bow?

A. Yes sir.

Q. When had you gone on duty?

A. We changed about four o'clock. I went on about 4 o'clock. We changed every two hours to take a turn at the wheel, and changed lookout.

Q. About where was the location of that accident?

A. Between West Point and Four Mile rock, I should judge; I could not tell exactly, it was foggy.

Q. Do you know about what time you passed West Point that morning?

A. I should judge a little after 5.

Q. You were bound in?

A. Yes sir, bound to Seattle.

Q. Was it very foggy at West Point?

A. Not so very, but it was good and hazy at the time, you could hardly see the light. You could make out the light house, but anybody who was not used to it could not make out what it was.

Q. Now, what was the first intimation that there was some boat ahead of you that morning?

A. I reported a whistle off the port bow, a single whistle.

Q. A single whistle?

A. Yes, one whistle.

Q. Did you report that to the officer in charge?

A. Yes sir, and he answered me.

Q. Was it possible from where you were stationed, to know what was done in the pilot house when you reported?

A. No sir, I could not tell, I was too far away.

Q. What happened next?

A. Well, about a minute or a minute and a half, I heard another whistle, single whistle, in about the same direction I should judge it was, about that time.

Q. Did you report it?

A. Yes, I reported the whistle again.

Q. Do you know what happened then?

A. I felt the boat slowing down, slowed right down at that time until I could not feel her vibrate at all.

Q. Did you make any further reports?

A. No, not at the time, that is I reported that single whistle.

Q. How long had you heard this second whistle did you see a boat ahead of you, or an object?

A. I could not tell you the time, but I heard a tow whistle and I reported the towing whistle, and a few seconds afterwards I seen the red light come in sight that was on the barge, and I seen the barge afterwards. I saw the light, it was a red light after the towing whistle, on account of getting close to us.

Q. And how was the towing done, what was the arrangement?

A. He was towing alongside.

Q. How was she lashed on the side, did she project or not?

A. Yes, she stuck out forward quite a bit.

Q. How much do you think?

A. Oh, about 20 feet, I should judge.

Q. How did you come in contact with her, did you hit her straight on or how or what did you hit?

A. We hit her a kind of a glancing blow.

Q. The barge or the scow?

A. The barge, we hit the barge a glancing blow, more of a glancing blow than it was ahead.

Q. What distance do you think you saw, at what distance from the scow did you first see her?

A. Seen the scow from the steamer?

Q. Yes.

A. I should judge about 100 feet or 150 feet. It might be more than that.

Q. During the interval when you saw her and when you came in collision, did she change her position and swing in?

A. No sir, I could not make that out. I reported there was a red light ahead, and I kind of stepped back. I seen there was going to be a collision.

Q. Do you know whether or not you had any headway when the two vessels came together?

A. No, that is we had sternway, if anything.

Q. You had sternway?

A. Yes, we were backing up all right.

Q. How do you know that?

A. I seen the foam from the wheel going right up against the scow when she hit, just under the stem, just under the stem, you could see where she was sending the water up.

Q. How long had you been on the *Rosalie* before this accident?

A. About two years, I should judge, a little less than that.

Q. Do I understand you to say that as you looked forward at the scow, as you were approaching, you could see white water from the *Rosalie's* wheel going up to the scow before you hit her?

A. Yes, before we hit her I seen that.

Q. Had you any means of knowing, from your position, as to how the engines were being handled on the *Rosalie*, just previous to the collision?

A. No sir; I could not tell how they were handled at all. I know she slowed down before the collision, and you could not feel the vibration at all, and there was no swell from it; she was making no swell.

Q. Immediately before the collision, after you saw her, could you tell what her engines were doing?

A. No sir, I could not tell.

Q. Did both vessels or either of them give an alarm whistle?

A. Yes, gave danger whistles about the same time, both together, it seemed to me.

Q. Did you hear any other whistles from the Tillicum after that?

A. No sir. Never gave any more signals at all.

Q. Now, after the vessels had come in contact, or immediately after, what was their position shortly after they came in contact?

A. The Tillicum was off our starboard beam. We kept backing away from her all the time and she swung to our starboard, and the man on watch asked him if he was all right and if he should keep on going, and she was off our starboard beam then.

Q. You spoke of hearing a towing whistle. How long was that before the collision?

A. Well, just a short time, just about the time I seen the lights, we were just over the whistle when I see the lights and seen the barge.

Q. You don't know, I suppose, of your own knowledge, at what time these various things happened?

A. No sir, I do not. I don't know the time at all.

Cross Examination.

Q. (Mr. Hughes). How long had you been lookout on the steamer Rosalie prior to this time?

A. About an hour and a half.

Q. But for how long a time had you been employed as lookout on the Rosalie?

A. Well, about two years, I should judge. I was night watchman at the time, I was not lookout.

Q. Night watchman?

A. Yes, we took turns about standing lookout, two hours apiece.

Q. Two night watchmen, are there?

A. There is a night watchman and a lookout.

Q. Night watchman and lookout.

A. Yes, they have to take turns at the wheel.

Q. The lookout does?

A. Yes sir.

Q. Did you take the wheel?

A. Yes, I took the wheel two hours. And then we changed about and then the watchman goes to the wheelhouse and I would go on lookout.

Q. Did not they have a quartermaster at the wheel?

A. No sir, not on that boat.

Q. You as night watchman stood at the wheel for two hours and then would act as lookout for two hours, is that it?

A. Yes, two men employed at night, one would stand lookout and one takes a watch at the wheel.

Q. These were your regular duties as night watchman were they?

A. Yes sir.

Q. Half the time at the wheel and half the time on the bow?

A. Yes sir.

Q. And you had been on the Rosalie in that capacity for about two years?

A. Pretty near two years.

Q. You had what run on the Rosalie at that time?

A. It was on the San Juan and Bellingham run.

Q. Tell us what your run was?

A. Well, she started here at 12 o'clock at night and went to Townsend and goes over to San Juan island and stops at Bellingham, and at eight o'clock in the evening came down to Seattle during the night.

Q. What time did she leave Bellingham to return?

A. Eight o'clock.

Q. And you left Bellingham on your return to Seattle at 8 o'clock at night?

A. Yes, for Seattle.

Q. Then what time did she arrive at Bellingham when she was going in there?

A. About four or five o'clock.

Q. Four or five o'clock.

A. Yes sir.

Q. And she would leave at eight o'clock that night.

A. Yes sir.

Q. And go back again over the San Juan island route?

A. Yes, she came direct to Seattle in the evening, came right through to Seattle.

Q. By what route?

A. Through the outside or through the pass, through Deception pass if the tide permitted.

Q. She goes through Deception pass?

A. Yes at times; most of the time she goes outside in the Straits, she would go by Port Townsend.

Q. Which way did she go that night?

A. She went outside that night, by Townsend.

Q. Did she call at Townsend?

A. No sir, she did not stop at Townsend.

Q. Did she stop anywhere after leaving Bellingham?

A. Yes, she stopped at Anacortes.

Q. She stopped at Anacortes.

A. Yes sir, that is one of the points of call.

Q. She came from Bellingham to Anacortes?

A. Yes.

Q. What time did she leave Anacortes?

A. I could not tell you, I do not know.

Q. Then from Anacortes did she go over to Port Townsend?

A. No, she came direct to Seattle.

Q. By which route?

A. By Port Townsend, outside, we went by Townsend, outside.

Q. What pass does she go through to go from Anacortes, to go to Admiralty Inlet, is it?

A. Yes, she comes through Admiralty Inlet into Rosario Straits.

Q. Did she go over through Rosario Straits after leaving Anacortes that night?

A. Yes, she came through part of that, as far as Partridge, and from Partridge down to Admiralty Inlet, and then inside.

Q. Which side of Smith's island did she go?

A. On the inside of Smith's island, between Whidby and Smith island.

Q. Then down Admiralty inlet?

A. Yes sir.

Q. Do you know how many miles it is by that route?

A. I should judge about 90 from Bellingham to Seattle?

Q. By that route.

A. Yes, I should judge somewheres like that. A little less, may be.

Q. What time were you due in Seattle?

A. She was generally due about six o'clock; sometimes a little early and sometimes a little late.

Q. Were you late that night?

A. No sir, just about on time.

Q. Making regular time?

A. Yes. We did not have any freight at Anacortes and we got out on time.

Q. Are you sure you got out on time from Anacortes?

A. I think so. We would not have been down that far if we had not.

Q. Was it foggy that night all the way?

A. No sir, just started at Apple Tree, got hazy at Apple Tree point.

Q. From Apple Tree point to Seattle was foggy?

A. Yes, hazy; at West Point it came down thick and from there it was foggy all the way into Seattle.

Q. Could you see the West Point light?

A. I could just see part of it, just the top of it, you could not make out what it was.

Q. Could not make out the light?

A. No sir, you could not make out the light. You could see the bluff over the top of the light.

Q. It was too foggy to see the house?

A. No sir. It was a low fog right at West Point, the fog was hanging awfully low; you could see right over the top.

Q. Did you report West Point light?

A. Yes, reported West Point light. I reported the horn, the horn was blowing.

Q. You could tell the horn?

A. Yes, I could tell the horn.

Q. Did you take a note of the time it was?

A. No sir, I could not, I was on the bow at the time.

Q. You said a while ago that it was about five or a little after five when you passed, how do you know?

A. I judged that was the time, because we passed Apple Tree about forty-five minutes or an hour, I went on watch at Apple Tree, and I should judge it was about five o'clock.

Q. You changed watch at five o'clock?

A. No sir, off Apple Tree.

Q. What time was that?

A. I could not tell you to be sure what time it was. I did not look.

Q. You ought to know when you went on watch?

A. Sometimes a little later and sometimes a little earlier; we were not particular about changing.

Q. You had been on the lookout from the time you left Apple Tree?

A. Yes sir.

Q. Who fixes the time in your log of passing these various points?

A. The officer on watch, who ever is on watch.

Q. Who was on watch that night?

A. The mate was on watch.

Q. What is his name?

A. Captain Hanson.

Q. Captain Hanson?

A. Yes, Andy Hanson.

Q. He was mate and he was on watch?

A. Yes he was on watch at the time.

Q. Where was he?

A. He was in the pilot house. He had the windows down, he was hanging out of one of the windows, he was looking out of the windows.

Q. The other lookout was at the wheel in the pilot house?

A. Yes, he was steering.

Q. Anybody else in the pilothouse?

A. No sir, just two men in the pilothouse that I know of.

Q. How far were you forward of the pilothouse?

A. Well, about 20 feet.

Q. About 20 feet?

A. Yes, right on the bow.

Q. How far were you back of the bow of the boat?

A. Well, about five feet.

Q. It was only about 25 feet from the pilothouse to the bow of the *Rosalie*?

A. Yes sir. Just about.

Q. Has the *Rosalie* two decks?

A. Yes sir.

Q. This was the upper deck, was it?

A. No sir, the middle deck. I was on the saloon deck, the passenger deck. I was forward on the passenger deck.

Q. And has she a deck below that?

A. Yes, she has a maindeck.

Q. Well, the bow of the maindeck is much further forward?

A. No sir, it runs right up, it is housed up to the saloon deck.

Q. How high was it above the water, the saloon deck?

A. I should judge about 12 or 15 feet.

Q. Had you been standing out there all the time or had you been back in the pilothouse part of the time?

A. No sir, standing there since *Apple Tree*, I was there at the bow since *Apple Tree*.

Q. What reports had you made after you went on the lookout up to the time of the collision?

A. I reported *West Point* horn; I reported one single whistle off the port bow, then another whistle off the port bow, then I reported a towing whistle.

Q. Now before passing *West Point* had you reported anything, passing any other ship?

A. No sir, had not seen any other ship at all.

Q. The first thing you reported after you went on the lookout was *West Point* horn?

A. Yes sir, the horn.

Q. How long after reporting that was it until you heard the whistle off your port bow?

A. I could not tell you the time at all.

Q. Well, about how long, 10 minutes?

A. No, I don't believe it was that long; I don't believe it was over five minutes. It was only a short while.

Q. Well, did you report the first whistle that you heard?

A. Yes sir, I reported the first whistle that I heard.

Q. Did not you hear a fog whistle further away before you reported that?

A. No sir, that is the first whistle that I heard.

Q. You could not see any vessel when you first heard the whistle?

A. No sir, could not see anything.

Q. About how far did it seem to you to be away?

A. I could not tell you that.

Q. What report did you make, what did you say?

A. I reported a whistle off the port bow.

Q. Well, what was it you said?

A. Just what I told him, I reported a whistle off the port bow, that is all I could do, that is all I heard, the whistle.

Q. Was that one whistle?

A. Just one whistle.

Q. Now about a minute after that you heard another whistle?

A. Yes, same kind of a whistle, and I reported again.

Q. Do you remember what it was you said that time?

A. I reported a whistle off the port bow, again.

Q. You said "Whistle off the port bow"?

A. Yes.

Q. That is what you called it?

A. Yes, whistle off the port bow.

Q. You still did not see any lights?

A. No sir, could not see a thing.

Q. Could you tell by the sound about how far distant it was?

A. I could tell it was coming closer; I could not tell how far it was.

Q. Had you an idea how far away it was?

A. No sir, I had not.

Q. After reporting that second whistle what was the next?

A. I heard three whistles, one long and two short whistles. I reported that it was a towing whistle.

Q. Where was that, on your port bow?

A. Yes, just about, it was coming ahead of us, getting more on the head.

Q. But still somewhat on your port bow?

A. Yes sir.

Q. Seemed to be closer, did it?

A. Yes sir.

Q. About how long was it after the second whistle you reported was it until the three whistles, the long and two short whistles that you heard?

A. I should think about half a minute; it may not be that long. It was a short interval.

Q. What was the next whistle that you heard after that?

A. They were blowing the danger whistle.

Q. Who blew the danger whistle?

A. The Tillicum blew a danger whistle.

Q. The Tillicum?

A. Yes, both blew.

Q. How long was it after you heard the long and two short whistles until the danger whistle was blown?

A. Well, it was only a short time; I could not tell you the time.

Q. Think it was half a minute?

A. I don't think it was. Just as soon as she blew the towing whistle I could see the light, and I reported a red light.

Q. After the one long and two short whistles, you called that a towing whistle?

A. Yes sir.

Q. And soon after that you saw a light ahead of you?

A. Yes sir, red light.

Q. That was still a little on your port bow?

A. Yes sir, it was dead ahead of us, the red light was.

Q. By the time you saw the red light it was dead ahead?

A. Yes sir.

Q. You saw one red light?

A. Yes sir.

Q. That is the only light that you saw?

A. That is the only one I saw.

Q. Did you report that light?

A. Yes sir.

Q. What did you report?

A. Reported red light dead ahead.

Q. You reported a red light dead ahead?

A. Yes sir.

Q. You are sure you reported it that way, are you?

A. Yes sir.

Q. After reporting the red light, how long was it before you heard the danger signal?

A. He blew a danger signal just as we struck, just as we had the collision, he blew a danger whistle.

Q. How long after you saw the red light was it before the danger whistle?

A. No time at all. I could not tell you the time; I stepped back a little.

Q. You say you saw a light and saw the scow too, didn't you after you saw the light?

A. Yes, I saw the barge loom up.

Q. You saw the light a little before you saw the loom of the barge?

A. I saw the light first, and the light was on the other end of the scow.

Q. You saw no light on the Tillicum at all?

A. No sir, not until after I had seen the scow, then the lights of the Tillicum loomed up.

Q. When you saw the scow you testified a while ago that she was about 150 feet away from you.

A. Yes, I should judge about that, or the light was, rather.

Q. About that time you could see the Tillicum loom up and see her lights, could not you?

A. Just a little after that.

Q. After you saw the scow.

A. Yes, I seen the light on the scow first.

Q. What light did you see on the Tillicum?

A. I seen the red light and her two lights, that is all I could see.

Q. Two red lights.

A. And those forward on the main mast.

Q. And how soon after you saw the Tillicum's lights, the two lights forward and mainmast light was it that you heard her blow her danger signal?

A. I could not tell you about the time, because that happened very quick.

Q. That was four blasts of the whistle?

A. Yes, four danger blasts.

Q. Immediately after that your ship gave four blasts?

A. Yes, just about the same time, just about the time the Tillicum made them our ship answered right away, gave about the same time.

Q. Could you see your ship change its course at all during this time?

A. No sir, I could not tell.

Q. When you saw the Tillicum, after seeing the barge by the side of it, you realized that they were so close and coming towards each other, that there was going to be a collision?

A. Yes sir.

Q. You rushed back?

A. About four or five feet. I went back about ten feet.

Q. Did you go clear up to the pilot house?

A. No sir, I did not go that far. I stood pretty well forward on the bow and I stepped back about 10 feet right from the hatch; there is lots of room. I was forward of that gang way. I thought I would step back of that gangplank.

Q. And you stayed there until after the collision, did you?

A. Yes. Stood right up there and went up forward after that.

Q. Were you right in the center of the ship from one side to the other?

A. Yes sir, practically; there is a couple of feet on each side to walk by, across there there is lots of room to walk on either side of it.

Q. Now in your position you could not tell anything about how the waves were, with the dense fog that was on the water, could you?

A. What waves do you mean?

Q. You could not tell about the wash of the sea around your ship, could you?

A. It was only white foam all around the bow; I stepped to one side and looked and I saw the white foam.

Q. By that time the two vessels were right together?

A. Just about that time the foam was going up against the scow, it seemed just white all around.

Q. White all around the scow, and you could look down ahead of you and saw the white foam all around the scow?

A. Yes, in front of the scow.

Q. And around the bow of the Tillicum?

A. I could not tell that. I did not look. I only seen the scow.

Q. Was not the scow swinging to starboard?

A. I could not tell if she was swinging around, I could not tell.

Q. Where did the bow of your ship strike the scow, in front part of the scow?

A. Just pretty near on one side.

Q. Near the port corner of it, near the port side?

A. No, to starboard.

Q. Between the Tillicum and the scow?

A. Yes, I think so, just about.

Q. Did it break into the scow at all?

A. I could not tell you.

Q. How long was it before they pulled apart?

A. Just about a second. No time at all, just hit and bounced right back. No time at all.

Q. Both drew away.

A. Yes.

Q. Did your ship back away or did she go on?

A. No, she kept backing. She kept going back; the foam kept coming all the time.

Q. How long did she keep going back?

A. I could not tell you.

Q. How far did she get away from the Tillicum?

A. I should judge about 100 feet, or a couple of hundred feet I should think. It is hard to judge the distance in a fog.

Q. Did you notice when she started ahead again?

A. Yes sir.

Q. Was the Tillicum lying still there in the water while you were backing away from her, before you started ahead again?

A. She looked like she was lying still.

Q. Did your officer speak to the captain of the Tillicum?

A. Yes, he talked to the captain of the Tillicum and asked if he was all right, and he reported that he was all right.

Q. Did he ask you whether you were all right?

A. I could not tell you that; I did not hear it.

Q. Do you remember whether your mate, your officer on deck, made any answer to him as to whether he was all right, or safe, or not?

A. He reported all well to them.

Q. How long was it before you started ahead and went on towards Seattle?

A. I should judge about three or four minutes; may be we laid there before we got straightened up again.

Redirect Examination:

Q. (Mr. Robinson). You were in a position where you could see the port and starboard lights on the Rosalie?

A. Yes sir.

Q. Were they burning?

A. Yes, they were burning. I generally look back about every ten minutes or fifteen minutes, I would look and report.

Q. Was the Rosalie sounding fog signals after she passed West Point?

A. Yes sir, pretty regular.

Q. How do you mean, pretty regular, about how often?

A. I should judge about every half minute for a while.

Q. (Mr. Hughes). When she first passed West Point, you think she was sounding fog whistles every half minute?

A. There for a while she was blowing pretty regular for a while.

Q. Why did she quit blowing regularly?

A. She blowed every minute from there on trying for an echo.

Q. You had not got far enough down to begin to try to get an echo?

A. Yes sir.

Q. You were not near enough to the bluff to try to get an echo?

A. Yes, I think so.

Q. How long had you been running past West Point light?

A. I don't know how long, a few minutes I should judge, something like that.

Q. You would not look for an echo from the bluff until you got in the neighborhood of a mile or more this side West Point light, would you?

A. Yes, I would.

Q. It is a long ways off from the bluff; the bluff comes down low, don't it?

A. It comes down to a bluff, but you don't run far past the light.

Q. You do not begin to get an echo on your way into Seattle until you get a mile or a mile and a half past West Point light, do you?

A. Yes sir, I think we do.

Q. How soon do you, after you pass West Point light?

A. I could not tell you.

Q. Do you know what course she steered past West Point light to Seattle?

A. Yes sir.

Q. What?

A. South east by east on the Rosalie; that is on her course.

Q. The Rosalie's course from West Point light you steer south east by east?

A. Yes, just about that course. I don't know what they were steering that night, that is the regular course to steer, that is, from the light to Four Mile rock.

Q. That is from the light to Four Mile rock you steer south east by east?

A. Yes sir.

Q. I have asked you to tell me all the whistles that you heard. Have you told me all the whistles that you heard?

A. Yes sir, all the whistles that I heard.

(Testimony of witness closed).

CAPT. ANDY HANSON, a witness called on behalf of the libellant, being duly sworn, testified as follows:

Q. (Mr. Robinson). Mr. Hanson, what is your occupation?

A. Sometimes master, sometimes mate.

Q. What kind of a license have you, captain?

A. Ocean license.

Q. How long have you had it?

A. Oh, I have had an ocean license for about ten years and I have had a license for Puget Sound about 22 years, something like that.

Q. How long have you been going to sea?

A. Going to sea all my life, ever since I was twelve years and a half old.

Q. Captain, were you navigating the *Rosalie* on the morning of the 8th of April, 1911, when she was in collision with the scow and tow of the *Tillicum*?

A. Yes sir.

Q. Where were you bound, captain?

A. Bound to Seattle.

Q. And about where did this collision happen, as near as you can place it?

A. Well, about three-quarters on this side of West Point.

Q. About three-quarters of a mile this side of West Point?

A. Yes sir.

Q. Captain, was there a heavy fog when you passed West Point?

A. No sir, it was quite a fog, but I could see the lights from the pilothouse.

Q. Was there any change in the fog as you came into the harbor?

A. Yes, just as we came by it set in thick then with fog.

Q. Do you know what time you passed West Point light?

A. 5:05 in the morning.

Q. Who was at the wheel?

A. Harry Gates.

Q. And did you have a man on the lookout on the bow?

A. Yes sir.

Q. Who was that?

A. Lee Bougojard.

Q. Where were you?

A. In the pilot house.

Q. Were the windows up or down?

A. The windows were down, sir.

Q. Did you sound your fog whistle after passing West Point light?

A. Yes sir.

Q. About what intervals?

A. Oh, about every half minute or less.

Q. Did you hear any whistles ahead of you, captain, after passing West Point light?

A. Well, not when I passed, but after three minutes I heard a whistle ahead.

Q. Was that reported by the lookout?

A. Reported by the lookout.

Q. What did you do then?

A. I stopped the boat.

Q. You stopped the boat?

A. Yes.

Q. You mean you stopped the engines?

A. I gave the signal to the engineer to stop the engines.

Q. What did you do?

A. I was drifting along there for about a minute.

Q. Then what?

A. I did not hear any more whistles and I started ahead. Just at the time I started ahead I heard a whistle again and so I stopped her and backed her.

Q. How long were you running ahead when you speak of starting ahead?

A. Oh, just about two seconds, just rang the bell when he reported another whistle and I stopped her and backed her.

Q. Then what did you see or hear next?

A. I kept on blowing whistles pretty close all the time to try to locate him because the boat sounded to be ahead but I did not get any answer to anything so I kept on backing. I thought it kind of strange that I did not hear none, so I backed about two minutes I guess, then I heard a tow whistle right ahead and right after that I heard the danger signal.

Q. When did you see anything ahead after that time?

A. I saw a red light just about the time they blowed their danger signal and a glimpse of a red light and I blowed at the same time I seen that.

Q. About what time did you come in collision?

A. 5:10.

Q. About 5:10?

A. Yes sir.

Q. How long captain, to your best judgment, do you think

you had been backing your boat before you came in contact with that scow?

A. Backing about a minute.

Q. But you did not have any headway at the time that you came in contact with the scow?

A. No sir, we had sternway.

Q. What is your reason for saying that?

A. I have been on there a long time, and I know pretty well how long it will take her to back after we stop her.

Q. Well, have you any other reason for thinking you had sternway?

A. Well, I looked out after we came close to her, and I seen the white foam on the side coming from the stern of the Rosalie.

Q. How long had you been on the Rosalie previous to the happening of this accident. How much time had you put in on her as navigating officer, do you suppose?

A. Well, I have been navigation officer on the Rosalie, altogether I suppose about five or six years, but not all at one time.

Q. Altogether?

A. Yes sir. Probably a little more or a little less, you know.

Q. Captain, did you hear more than one towing whistle?

A. No sir.

Q. Just one. How was the tug lashed to that scow, captain, which side was she on?

A. She was on the port side of the scow—the scow was on the port side of the boat.

Q. The scow was on the port side of the boat?

A. Of the Tillicum, yes.

Q. Did you notice whether the scow projected ahead of the bow of the Tillicum?

A. Yes, it must have projected a matter of 20 feet.

Q. Did you notice whether the stern of the Tillicum projected beyond the stern of the scow?

A. I did not notice that.

Q. What conversation did you have with anybody on that scow or tug after the collision, did you stop and talk to them?

A. No, we did not talk except we asked if they were all right and they reported O. K.

Q. How far do you think you could see her when you first saw the scow, how far were you from her, do you think?

A. We could not have been over 75 or 100 feet at furthest.

Q. During the time when you did have her in sight, could you notice whether she was swinging the scow?

A. No sir. She was dead ahead when I saw her; I did not see her swing.

Q. Did you ever work on tow boats, that is towing in the fashion that this scow was towed?

A. Yes sir.

Q. That is lashed on the side and the scow sticking out in front?

A. Yes sir.

Q. What would be the effect then, captain, if the Tillicum was running her engines astern, or had sternway, what effect would that have on the scow, what direction would it give her?

A. She would swing to port. A towboat when she has got anything on the side and ahead of her that way, a ship or a scow or anything, the minute you back her, you swing into the scow, the way the scow is, the side the scow is. If she had swung she should have been on our port side after we were through.

Cross Examination:

Q. (Mr. Hughes). Captain, when did you go on duty that night?

A. At one o'clock, sir, in the morning.

Q. Who was the captain of the *Rosalie* then?

A. Captain Sam Barlow.

Q. And you were the first officer, were you?

A. Yes sir.

Q. Were you on duty when you left Bellingham?

A. No sir.

Q. Where were you, captain, at that time?

A. I was abed.

Q. Who was on duty from then until 1 o'clock?

A. Captain Barlow.

Q. You were called and went on duty at one.

A. I am called at half past 12 and go on duty at one, yes.

Q. Did you go to *Anacortes* that night?

A. I was not on duty when they went to *Anacortes*.

Q. Was your trip made that night by way of *Anacortes*?

A. Yes sir it was made by *Anacortes*.

Q. You went down there inside to *Anacortes*?

A. You mean from Bellingham?

Q. Yes. How did you go from Bellingham?

A. Captain Barlow was on duty; I was not on duty.

Q. Do you know what the regular route was?

A. I do.

Q. Do you know what route they took?

A. I could not say what route they took when I am not on duty.

Q. You don't know, but you knew what was the regular route when you went to Anacortes?

A. Yes, I do know.

Q. You know what is the regular route when you come from Bellingham by way of Anacortes?

A. We come the inside route by Clark Point and Cypress island and Williams light.

Q. What route did you take from Anacortes to Seattle?

A. That night we took the outside passage across the Straits.

Q. What way did you go across from Anacortes to Rosario straits, through what pass?

A. There is no pass at all. We came through the Bellingham channel and from Anacortes we crossed the mouth of Rosario straits, and we go close to the strait of Juan de Fuca.

Q. Cross part of the straits of Juan de Fuca?

A. Yes sir.

Q. And from there you come down Admiralty inlet toward Seattle?

A. Yes sir.

Q. Where was it you went on duty?

A. I went on duty at one o'clock. I have forgotten now where, but somewhere about Admiralty inlet—no, somewhere about Partridge point.

Q. Partridge Point?

A. Yes, between Partridge Point and Marrowstone Point.

Q. Well, she was below Marrowstone Point somewhere, was she?

A. Yes sir.

Q. Was your boat on time?

A. Pretty regularly on time.

Q. Was she that night on time when you went on deck?

A. Well, she was pretty well on time, yes. Sometimes we get a little earlier or a little later.

Q. But that night, were you on time when you took charge, when you went on deck?

A. The boat might have been a few minutes late.

Q. Did you have any fog when you first came on deck?

A. No sir.

Q. When was it you say you first encountered fog?

A. We encountered fog about Apple Tree, began to get hazy, no fog, but hazy.

Q. Well, when did you first begin to get more or less fog on the water?

A. Well, it set thick fog after we passed West Point.

Q. Did you have any fog before you came to West Point?

A. From Apple Tree we had a little haze.

Q. Was there enough fog for you to give your fog whistle between Apple Tree and West Point?

A. Yes, one place there was a little fog and I blew the whistle.

Q. Are you sure you blew the whistle at all between Apple Tree and West Point?

A. Yes sir.

Q. I mean fog whistle?

A. Yes sir. A couple of times, not all the time.

Q. You did not have much fog, you say, at West Point, you could see the light?

A. I saw a glimpse of it, yes.

Q. Did you hear the fog horn at West Point?

A. Yes sir.

Q. Did you give any signal passing West Point, yourself?

A. I blew a fog whistle.

Q. How soon after passing West Point did you blow a fog whistle?

A. I blew a fog whistle before coming to West Point.

Q. I thought you said there was not much fog?

A. There was a haze. We blow a fog whistle when there is haze, too.

Q. Did you pass any vessels?

A. No sir.

Q. Did you blow the fog whistle yourself?

A. Yes sir.

Q. You did that yourself?

A. Yes sir.

Q. What kind of a whistle have you?

A. We have a regular steamer whistle. A good one.

Q. Do you know how many whistles you blew after passing West Point before you had this collision?

A. I cannot count the whistles but I blew every half minute or less.

Q. When did you begin to blow in the fog after passing, to get an echo from Magnolia bluff, how soon after passing West Point?

A. I did not blow any whistle to try to get an echo; we were not far enough.

Q. You were not far enough?

A. No sir.

Q. You say your lookout reported a whistle on the port bow?

A. He heard it on the port bow, he said.

Q. How long after you passed West Point light was that?

A. Well, we were about three minutes.

Q. Did you make any note of it?

A. Yes sir.

Q. You entered it in your log?

A. Yes sir.

Q. When did you make that entry?

A. I made the entry when I stopped the boat.

Q. Right there at the point of collision?

A. No sir, when I stopped the boat.

Q. Did you have your book when you made the entry?

A. The book right here. All I have to do is to turn and put it down.

Q. Have you got your log book with you?

A. I think the captain has the log.

MR. HUGHES: Let me see it, captain.

(Log book produced by Captain Barlow.)

Q. Did you make the entries in this log yourself?

A. Yes sir. Part of it I made. I think Captain Barlow wrote down some afterwards, I am not certain. I have not seen it for about two years.

Q. You have not seen it for two years. Look at it and tell me which part you wrote and which part Captain Barlow wrote?

A. Yes, I will do that. I wrote this here and Captain Barlow wrote the other.

Q. When you say "this here," you mean the part which I inclose with a lead pencil circle?

A. Yes sir.

Q. Now the part which is inclosed with a lead pencil circle you say you wrote?

A. Yes, that is my writing.

Q. That that I have got marked around with lead pencil is your writing.

A. It looks like my writing. There is nobody changed it since I wrote it.

Q. It looks as if somebody had changed it, erased it, do you know anything about that?

A. No sir. You see I always put it down here before, in fair weather.

Q. What is that that you put down. What else is there on this same page that you wrote in your handwriting.

A. All this here.

Q. All of this?

A. Yes sir.

Q. You could not write what is down here very well before you came on duty?

A. Haven't I been on duty?

Q. You don't say you put down there 9:27 and 9:47, which entries are in your handwriting?

A. Here is mine, Marrowstone.

Q. You put down this 1:02?

A. The captain wrote that just when he left me.

Q. Now this Marrowstone, is that in your handwriting?

A. Yes sir.

Q. That looks very much like the same handwriting as that above it.

A. No sir.

Q. Beginning at Marrowstone, 1:50, you wrote that?

A. Yes sir.

Q. 2:26 Bush Point, did you write that, is that your writing?

A. Yes sir.

Q. 3:20, the next entry, Point-No-Point, you wrote that, did you?

A. Yes, that looks like my handwriting, yes sir.

Q. 4:50?

A. All them figures is mine.

Q. 4:00 Apple Tree?

A. Yes sir.

Q. That is your handwriting?

A. Here is four o'clock, yes sir.

Q. The next entry 4:20, President?

A. Yes sir.

Q. You wrote that?

A. Yes sir.

Q. Next entry 5:05 West Point?

A. Yes sir.

Q. You wrote that?

A. Yes sir.

Q. Now this looks as if there had been an erasure there. Did you make any erasure under the date of 5:05?

A. I did not make any alteration.

Q. Are these your figures, 5:05?

A. Here are my figures, yes.

Q. Did you make these figures 5:05?

A. Yes sir.

Q. Looks as though something had been erased, lead pencil erasure, did you do that?

A. No sir.

Q. Next entry 5:24 Four Mile Rock?

A. Yes sir.

Q. Now these particular figures, 5:07 stopped. 5:08

backed, are not written in regular order but written on one side on this page?

A. The reason of it I had to fill this up before I came there, I put down the places so as to put down the time.

Q. Then you did not make these entries on the right hand side until after you made the entries 5:25 Four Mile Rock?

A. 5:25 is afterwards, after we passed Four Mile Rock.

Q. But I say you made these other entries on the right hand side here after this page had been filled?

A. No, they were not filled except I had put down Apple Tree and West Point and Four Mile Rock and Seattle, I put that down ahead of time. I did not put down the course, I put that down as I came along.

Q. Why did not you put down this 5:07 and 5:08 in the regular order?

A. I could not, I had filled it up so that I could not do that.

Q. You had filled it up when you put this down?

A. Not the numbers. I had the places filled in, not the numbers, not the time. I could not put it in there except I rubbed it out, that is why.

Q. Do you know who made these erasures under these entries that you have here, fixing the time of stopping and backing, do you know who made the erasures?

A. I put that down myself.

Q. Do you know who made the erasures?

A. Who erased that?

Q. You do not know.

A. I put that down.

Q. Where did you get the time?

A. Off the clock.

Q. Did you put that down at the time when the thing occurred; did you look at your watch?

A. No, I looked at the clock. We have a light resting right on the clock, lighted all the time so that it don't interfere with the other and we can turn around and see the clock.

Q. Now you heard the report from your lookout saying that there was a whistle on the port bow, and then another whistle on the port bow, is that right?

A. Yes sir.

Q. Did you hear the whistle yourself?

A. Yes sir.

Q. Where did it seem to you? How near to you?

A. A long way off when first blown.

Q. What did you do?

A. I stopped the boat.

Q. Why did you stop the boat if it was only a whistle a long way off?

A. Because it sounded right ahead of us.

Q. Your lookout called the whistle on the port bow?

A. I heard it myself and it sounded to me to be right ahead.

Q. If it was a long way off there was no occasion for stopping?

A. Yes there is, for if two boats come running full speed toward each other it don't take long to come together.

Q. Were you running full speed?

A. I was running at moderate speed.

Q. Well, you said a moment ago that if two boats were running full speed it would not take long. Why did you stop if the whistle was a long way off ahead of you?

A. Because we take precautions so as to be sure and not get together.

Q. The mere fact of your hearing a whistle some distance ahead of you don't make you stop altogether?

A. Yes, I do, every time.

Q. Stop your engines completely?

A. Stop the engines completely, that is to get her located and be sure where she is.

Q. What signal did you give?

A. I was blowing one whistle all the time.

Q. The signal you gave to stop the engines?

A. I gave first one and then another. First one to slow down and then another to stop.

Q. How long were they apart?

A. Oh, they were close together, pretty close together.

Q. How long was it then before you heard the next whistle?

A. Oh, it must have been a minute or a little over.

Q. When was it that you backed, after you heard the second whistle?

A. After I heard the second whistle.

Q. That was some distance ahead too, was it?

A. Sounded pretty well ahead, yes.

Q. Why did you back?

A. Because she was coming closer.

Q. Why didn't you go off to starboard if she was apparently on your port bow?

A. I had no right to change my course in a fog before I know. She may go to starboard if I do, and if I go to port she may go to port.

Q. What is the speed of your boat?

A. Well, about nine and a half full speed.

Q. What speed did you have to make, to make your regular time between Bellingham, with the stops you had that night?

A. Well, it is depending on the tide.

Q. On the tide.

A. Sometimes we make it in eight hours, sometimes in nine hours and sometimes make it less.

Q. This night you made it in how many hours?

A. I did not notice when we left Anacortes.

Q. Your ordinary speed is nine and a half knots?

A. About that, yes.

Q. Now did you change your course at any time?

A. Depends on what you mean.

Q. I mean before the collision, did you change your course?

A. I did not change it after I left West Point.

Q. That is what I mean. Now, did you back your engines before you heard the second whistle?

A. I backed when I heard the second whistle.

Q. How long was it after you heard the second whistle before you heard the next whistle?

A. Oh, it must have been about a minute and a half, I guess. Something about that.

Q. Did you give any whistles in the meantime?

A. I was blowing one whistle all the time.

Q. What time?

A. Well, I will say about every half minute or less, to try to locate where the other boat was.

Q. You heard one fog whistle?

A. Yes sir.

Q. Then you heard another fog whistle just about a minute later and then you backed?

A. Yes sir.

Q. Now then, between these whistles, did you give any whistles?

A. I was blowing a fog signal every half minute or less.

Q. One blast of your whistle?

A. Yes. In the meantime between stopping and backing her you see I did not hear any whistle and so I started ahead and about the time I started ahead I heard a whistle and then I stopped and backed her.

Q. You did not make a note in this log book of starting ahead?

A. No, there was no need of it.

Q. Just as much need of that as making the note of stopping and backing?

A. No, she had not started ahead; she had started the engine when I stopped and backed her.

Q. After hearing the first whistle you stopped?

A. Yes sir.

Q. Gave a slow bell and then a stop bell, and then before you heard the second whistle ahead of you, you gave a bell to go ahead again, did you?

A. Yes sir, just about the time.

Q. Then you heard the second fog whistle?

A. Yes sir.

Q. Then what did you do?

A. I stopped her.

Q. Give the signal again to stop.

A. Stop and back her.

Q. And followed that with the signal to back?

A. Yes sir.

Q. Now in the meantime, it was a minute or more before you heard the next whistle ahead of you, is that right?

A. Probably not quite a minute, or about a minute, from the time I heard the first whistle until I heard the second.

Q. I am speaking of the time when you heard the second whistle until you heard the third whistle, the towing signal?

A. The towing signal was about a minute and a half or two minutes, closer to two minutes.

Q. Now between the second fog whistle and the towing whistle did you hear any other whistle from the Tillicum ahead of you?

A. No sir.

Q. Did you give any whistle at all?

A. I was giving one whistle. I was blowing my fog whistle.

Q. Did not give any other whistle at all?

A. No sir.

Q. Did you give any whistle after you heard her towing whistle, the three whistles, a long and two short?

A. When he gave the towing whistle, just about that time the light showed up, she was blowing a danger signal and I blew the danger signal.

Q. Now when you backed, why did not you give a signal that you were backing, so that she would know what you were doing?

A. I did not know how far she was. I was backing for protection. I could not tell where she was, she might have been a mile or she might have been a hundred feet from there.

Q. Well, when you saw her lights, why didn't you blow a danger signal?

A. I blew a danger signal then.

Q. You did not blow a danger signal until after he blew?

A. We blew about the same time, as soon as the lookout hollered.

Q. If you were giving fog signals, how could he know what you were doing, unless you gave him a signal to let him know that you were going astern? You did not give such a signal, did you?

A. We gave the danger signal to him. I was going astern when I gave the danger signal.

Q. But you did not give a danger signal until after he gave the danger signal?

A. Just at the same time.

Q. How quick after that danger signal did you run into her?

A. I did not run into her at all, she ran into us.

Q. How soon did you come together then?

A. Could not have been any time at all from the time I gave the danger signal and he gave the danger signal, we came together—no time at all.

Q. How far back was she when you saw her lights?

A. She could not have been over 75 or 100 feet away.

Q. Could you see the tow or the tug, either of them, before the collision?

A. I saw a glimpse of a red light, that is all I saw.

Q. Did not you see the vessel before the actual collision, before they came together?

A. I saw the loom of the scow; I could not see exactly what it was.

Q. Did you get a view as soon as you struck? Did you go forward?

A. No sir, I kept right in the pilot house.

Q. Could you see from your pilot house where you struck the scow?

A. No sir. I saw her strike in the head, I could not see what damage or what part.

Q. Now you have already told that the scow was made fast on the port side of the tug?

A. Yes sir.

Q. You have already testified that the scow extended forward of the bow of the tug?

A. Yes sir.

Q. About 20 feet.

A. Yes sir, something like that.

Q. When did you see that?

A. That is what I first saw when I saw the red light, I saw the loom.

Q. How could you tell she was on the port side of the tug.

how could you tell that she was extending forward of the bow of the tug, unless you could see her?

A. I saw it when we came together, that is the time I saw it.

Q. That is what I asked you. How did you come together, what part of the scow came in collision with the bow of the *Rosalie*?

A. The head of the scow, square scow, the head of the scow came in contact with the stem of the *Rosalie*.

Q. Which part of the head of the scow, port or starboard side of the scow came?

A. Looks to me to be about the middle. I could not tell. I was on the upper deck. I did not go down to look, I was in the pilot house.

Q. Could you tell which way the scow was swinging just before you came together?

A. Could not be swinging at all, because the bow of the scow was coming right for us. I don't think she was swinging at all.

Q. Could you see her enough to tell?

A. No, only the loom, could only see the loom.

Q. How soon did you pull away from the scow?

A. As soon as we—I stopped the boat—just the second we were together.

Q. What do you mean by saying you stopped the boat?

A. I stopped her turning. I was still backing when we struck.

Q. You did not stop the *Rosalie* until you backed away, did you?

A. I stopped her as soon as we were clear of her, then I stopped her.

Q. How long was that after the collision?

A. It was only a few seconds.

Q. Where was the tow and the *Tillicum* at that time?

A. She drifted over to starboard of us.

Q. She was drifting, was she?

A. I don't know whether drifting.

Q. Which way does your boat turn when you back?

A. Oh the boat will turn to port.

Q. Your boat backs to port?

A. Yes sir.

Q. Do you mean to say her bow will turn to port?

A. The bow will turn to starboard.

Q. Her bow will turn to starboard?

A. Yes sir.

Q. When you back her bow will turn to starboard.

A. Yes sir.

Q. Without changing the helm at all?

A. Yes sir.

Q. Now you say you have had large experience with towing boats, and with tows that are made fast alongside and forward. How do you say the Tillicum would swing if she were to back with a tow made fast to her port side?

A. If she backed she will be swinging to starboard.

Q. Of course.

A. Yes.

Q. If she backs with a tow on her port side? You mean if she has a tow made fast on her port bow, ahead of her port bow, if she backs—

A. Her stern will turn the way the scow is.

Q. Her stern will turn to starboard?

A. Turn toward the scow, the side the scow is on.

Q. Her stern will turn which way?

A. The boat's stern will turn toward the way the scow is.

Q. Turn on the side the scow is?

A. Yes sir.

Q. Her stern will swing to port?

A. The way the scow is.

Q. That will be to port will it not?

A. What do you call to port?

Q. Her stern will swing to port.

A. Yes sir.

Q. That will swing her bow to starboard?

A. Yes sir.

Q. So that if the Tillicum was backing, then the Tillicum's bow would swing to starboard, would it not?

A. Yes sir, he would swing in shore, if he was backing she should have been on our port side.

Q. That depends altogether on where your vessel was. I did not ask you about that because no one can tell how the two vessels will go, but you can tell which way the Tillicum pull. Her stern will go to port and her bow will go to starboard?

A. Yes sir.

Q. How long did you stay there before you went ahead, before you went on?

A. I did not pay much attention after that; we laid there and drifted and I asked the captain of the scow if he needed assistance and he said he was all right, and we started up. That might have been two or three minutes or might have been four minutes. I could not tell exactly.

Q. Did he ask you if you were all right?

A. I cannot really remember; I think he did.

Q. Did you stop and examine her bow to see whether you were all right?

A. Yes, we looked at the bow to see if we were all right.

Q. Where was the Tillicum lying while you were talking to him?

A. He was on our starboard side.

Q. Forward of you?

A. No, he was right abreast on the starboard side.

Q. Was he back of your bow, abreast amidships or abreast of your bow?

A. He was right abreast us. Abreast means amidships, does it not?

Q. Was the tow between you and the Tillicum?

A. No sir.

Q. Where was the tow?

A. The tow was on the other side of her; her tow was on the port side.

Q. How far was he away from you when you were talking to him?

A. Oh, about two or three hundred feet.

Q. Then you could hardly see him?

A. Just could see him.

Q. Just see the lights?

A. We saw the lights of the boat, yes. He might not have been quite so far as I say, because foggy weather is deceiving and looks further than it is.

Q. You said captain that when you backed the *Rosalie* her stern swings to port and her bow to starboard?

A. Yes sir, after she gets stopped headway, not right off. When she is going ahead she does not turn at all until she stops headway.

Q. As soon as she stops headway she begins as she moves back in the water to swing to port with her stern and her bow to starboard?

A. Yes sir.

MR. HUGHES: I offer this log book in evidence as part of the cross examination of the witness.

Log book marked claimant's exhibit "1," filed and returned herewith.

(Testimony of witness closed.)

W. L. KINSEY, a witness called on behalf of the libelant, being duly sworn, testified as follows:

Q. (Mr. Robinson). Mr. Kinsey, were you the engineer

on board the *Rosalie* on the morning of the 8th of April, 1911, when she was in collision with a scow and tug?

A. Yes sir.

Q. Were you on duty at the time of the collision?

A. Yes sir.

Q. Were you chief engineer of that boat?

A. No sir, assistant.

Q. What license had you at the time?

A. Chief of inland.

Q. What experience had you had on that particular boat prior to that time?

A. About 16 to 18 months.

Q. Now, could you tell, Mr. Kinsey, about when you passed West Point that night?

A. No sir, I was down in the lower engine room, and I could not hear the whistle.

Q. You knew when you came into collision that night, didn't you?

A. Yes, I felt them stop.

Q. How had you been running your engines immediately previous to coming into collision?

A. Why, we had been running at reduced speed, that is when we ran into the fog, it was customary to whistle down, telephone down and tell me that we were in a fog, and we usually eased up a little, reduced the steam. I should say reduced it down a knot or so, but I could not say the hour.

Q. About what time was that that you got that order?

A. It was about 4:45 or 4:30. I could not tell just the time. I had my watch in my clothes and I was away down in the lower engine room and my watch was in the upper engine room. I was busy down below, and had my watch hanging in the upper engine room, and the clock was also there.

Q. Well then, what has been your experience with the boat *Rosalie*, what speed would she be making after you got that order at 4:45 or whenever it was?

A. She would be making between seven and eight knots.

Q. What was the next order you got from the bridge?

A. I got a slow down and stop bell.

Q. Were they close together?

A. Yes sir.

Q. What next?

A. Then sometime after that I got a bell to go ahead.

Q. How long did you go ahead?

A. Oh, just what we call a kick ahead. It would only be

two or three revolutions, you know. Just a few revolutions, and the other bells came immediately after.

Q. What next, Mr. Kinsey?

A. Well, we backed something over a minute when I felt the jar.

Q. Something over a minute?

A. Yes, I could not say just how long. I know it was considerably longer than the usual backing going into a landing.

Q. Mr. Kinsey, you say you had had 18 months experience on the *Rosalie* at that time?

A. Yes sir.

Q. As engineer.

A. About 18 months.

Q. Suppose the *Rosalie* to be going at a speed of between seven and eight knots an hour, and then have her engines stopped approximately a minute, and then just kicked ahead, and then have the engines run full speed astern for over a minute, what would you say, from your experience in handling the engines on the *Rosalie*, would be the effect on her headway?

A. She would be going astern, sir.

Q. Are you in the employ of the Inland Navigation Company or in the marine business at all now?

A. No sir.

Cross Examination:

Q. (Mr. Hughes). What are you doing now?

A. In the chicken business.

Q. How long since you quit the Inland Navigation Company?

A. Last May.

Q. Been in the chicken business ever since?

A. No sir, I have been in different businesses.

Q. Have you any engagement to go into the service of the Inland Navigation Company?

A. No sir.

Q. No application in with them for employment?

A. No sir.

Q. Did you go voluntarily or were you discharged?

A. I quit voluntarily.

Q. Did you keep a log in the engine room?

A. Just a log for comparison, that is all, nothing definite.

Q. Did not you keep a regular log in the engine room?

A. Yes sir.

Q. Have you got that log here?

A. No sir. As I say it was merely a desultory log for the comparison of time. Did not keep a log like a steamship.

Q. Did not you keep a log to show every unusual order that is given to you from the pilot house?

A. No sir, we put down the time at the end of the trip, it shows the length of time.

Q. Did you make a note of any of these orders that you got in the engine room?

A. When I got to Seattle I put down the time, that is the time that we stopped and the time of the collision.

Q. How long after you were in Seattle did you put down that time?

A. Why, as soon as we were tied up in Seattle. I could not very well leave the lower engine room to go up there.

Q. Did anybody give you the time, did anybody confer with you in making the entries?

A. No sir. I looked up through the grating and took a glance at the time, that is all, I could not tell the exact time at that distance, it was approximate.

Q. Did anybody help you when you made your entries in your log after you got to Seattle?

A. No sir.

Q. Did you make the entries in that log that morning immediately after you got into Seattle?

A. Yes sir.

Q. Were you alone in the engine room or did you have helpers?

A. Oh yes, had a fireman there.

Q. Have any assistant engineer there?

A. No sir.

Q. No other engineer beside yourself?

A. No sir.

Q. Nobody beside the fireman?

A. No sir.

Q. How many firemen did you have?

A. One fireman on watch.

Q. How can you remember now what signals you got and the length of time between them, if you made no record of it at the time and been out of that employ since then and had nothing to refresh your memory?

A. I made a record of it at the time.

Q. You say you made a record after you got to Seattle?

A. Yes sir.

Q. Did you make a record that morning after you got to Seattle?

A. Why certainly.

Q. Was there anybody present when you made that record in your log book?

A. Why, certainly. The fireman might have been there.

Q. Was there anybody present when you made that record beside that, was the captain present when you made it?

A. No sir.

Q. Or any one connected with the Inland Navigation Company?

A. No sir, not that I know of.

Q. Did you refresh your memory by looking at your log since that time?

A. No sir, it was not necessary. I might have lost that date it has been so long ago.

Q. I simply asked if you had looked at your log before coming here to testify, since you made the entry in the book?

A. No sir.

Q. You mean to say you never looked at your log since you made that entry in it?

A. Yes sir.

Q. Before coming here to testify?

A. Yes sir.

Q. Have you talked with Captain Hanson about the time, before coming here to testify?

A. I have not seen Captain Hanson.

Q. Have you talked with any one to refresh your memory before coming to testify?

A. No sir.

MR. HUGHES: I ask counsel to produce the log.

MR. ROBINSON: I will produce it if we can find it. I have not got it here. I never looked for it.

Q. How many engine rooms have you there, two?

A. Yes sir, the upper and lower with a grating between.

Q. What is the difference between the upper and lower, explain that?

A. The upper engine room is on a level with the main deck. The cylinder is about three feet above that deck, and the lower engine room is below that.

Q. How much below.

A. About seven or eight feet.

Q. What were you down in the lower engine room for?

A. Answering the signals.

Q. Cannot you answer them from the upper engine room?

A. No sir.

Q. Have to be in the lower engine room to answer the signals?

A. Yes sir.

Q. Why did not you have your logbook there where you had to work?

A. It was not up to me, it was that way when I went there.

Q. You never took your logbook where you did the work?

A. No sir.

Q. What work did you do in the upper engine room?

A. Oh, just the ordinary packing, ordinary engineer's duty up there.

Q. Your ordinary duties must have been performed in the lower engine room, you cannot operate the engine room but from the lower?

A. There is an electric engine on that deck.

Q. You did not run the ship by the electric engine on that deck?

A. No, but you run the lights by the electric engine on that deck.

Q. You did not have to pay any attention to the dynamo, the electrical engine, when you set the lights going you did not have to keep watching them?

A. You have to go up there every hour or half hour and oil it.

Q. You mean to say that the logbook was kept up in the engine room where the dynamo and electric engine is?

A. Yes.

Q. And not kept down in the lower room where your duties are as engineer in the navigation of the ship?

A. Yes sir.

Q. All your duties in navigating that ship are in the lower engine room, are they not?

A. Yes sir.

Q. And were you in the lower engine room all that time?

A. Yes sir.

Q. You have no knowledge when you passed West Point?

A. No sir.

Q. Did you have any information from the bridge that you had passed West Point?

A. No sir, I was not paying attention to the light.

Q. Did you have any clock in the lower engine room?

A. No sir.

Q. How did you get the time then when you were in the lower engine room if you had no clock there?

A. I looked up through the grating.

Q. You mean to say you looked up at the clock through the grating. Could you see the clock and see the time?

A. Yes, approximately, near enough for all purposes.

Q. It could only be a guess then. You did not see the watch and take note of the time?

A. I could see the hands of the clock, yes.

Q. You could see the hands on the clock.

A. Yes, looking at it at that distance.

Q. When you got the first signal where was the hands of the clock?

A. About 5:10, between 5:10 and 5:15.

Q. Why do you say about if you could see the time by looking up through the grating?

A. Well, I say about, because if I was in the upper engine room it would not look the same as from the lower.

Q. You don't know exactly what time it was?

A. No sir.

Q. You do not know exactly the time between the signals?

A. Only from the length of time.

Q. It is only a matter of guessing and estimating the time that you are giving here?

A. Approximately, as near as I can tell from the clock at that distance.

Q. Now are you sure you received any signal to change your speed before reaching West Point?

A. Yes sir.

Q. What makes you sure of that, you made no record of it in the logbook?

A. No sir, of course we always get that signal when he starts to blow the fog signal.

Q. Down below there you could not hear the whistles?

A. Yes, I can hear our whistles.

Q. Did you hear your whistle blow that night?

A. Yes sir.

Q. How many times did it blow?

A. Blowed as they usually blow in a fog, every half minute or so.

Q. You heard the signal, what was the signal you heard from the pilot house, what was your first signal?

A. Do you refer to the whistle or to the bell?

Q. After you passed West Point light, what signal did you get in your engine room from the pilot house?

A. I got bells to stop.

Q. What kind of a bell, one bell?

A. Two bells.

Q. Two bells?

A. Yes sir.

Q. You are sure about that?

A. Yes sir.

Q. What did you do?

A. Stopped the engine.

Q. What revolutions did you have prior to that time?

A. About 110 or 115.

Q. How many had you had from Apple Tree Cove on until you got near West Point?

A. Oh, we ran about 108 or 105.

Q. Then you had not changed it up to the time you got these two bells, you were running 108 or 110 revolutions of the engine, were you?

A. Yes sir.

Q. What did you do when you got those two bells?

A. Shut the steam off and stopped the engine.

Q. Didn't you first slow down?

A. You got to slow down to stop?

Q. Did you shut off the steam entirely?

A. Yes sir.

Q. At once. You got no intermediate signal to slow down and stop?

A. Two signals to slow down and stop.

Q. How long was it between these two signals?

A. Practically together.

Q. How long did you have the steam off?

A. Something about a minute.

Q. About a minute.

A. Yes sir.

Q. Then you got the signal to go ahead?

A. Yes sir.

Q. How can you say that you recollect how long you were going ahead?

A. Why a man in that business has those things in his head. She just got a kick ahead, that is the way you speak of it, if you are going ahead a certain length of time, it is all right, but if you say a kick ahead, that means just practically started ahead, then you reverse.

Q. You say a man has that in his head. How many times do you get signals like that that night? Can you remember all of them?

A. No sir, I do not have to.

Q. Can you remember anything that occurred before that or after that?

A. Oh yes.

Q. Without any record of it at all and you remember it now?

A. Yes sir.

Q. Then when you get the signal to go ahead and when you get the signal to stop, you can always carry that in your head? No matter how long afterwards?

A. Oh anything necessary.

Q. You never make a record of it in your log book at all?

A. If it is important we do, yes sir.

Q. You did not consider this important?

A. I did not consider that one bell important, no sir.

Q. Well, when you got the bell to go ahead, you almost immediately got a bell to stop?

A. Yes sir.

Q. And that was followed by what?

A. Two bells.

Q. What does that mean?

A. Go astern.

Q. I thought two bells meant to stop?

A. When you are going full speed ahead, yes.

Q. After you got these two bells you got two more bells, did you?

A. You are mixed up on the bells, I am not.

Q. Let us get it clear. You had stopped your engines?

A. Yes sir.

Q. Then you got a signal to go ahead?

A. Yes sir.

Q. And you started ahead.

A. Yes sir.

Q. Now you got what bells after that?

A. A bell to stop and two bells to go astern.

Q. A bell to stop?

A. Yes sir.

Q. And then how soon after that did you get the two bells to go astern?

A. Immediately, the three bells came together.

Q. Now then when that occurred, you knew there was something unusual happening, didn't you?

A. Yes sir.

Q. You made no record of it?

A. I could not run upstairs and make a record of it.

Q. You made no note of it of any kind at the time, did you?

A. No sir. I could not write it on the polished iron; I had to go upstairs.

Q. They provided no book for that purpose?

A. No sir.

Q. How can you tell how long it was that you were backing?

A. Well, the backing, you are backing every day, and you know how long it takes you, how long it takes as a general thing to back for a landing.

Q. Now Mr. Kinsey, during this time after you had stopped your engines first—

A. Yes sir.

Q. What whistles did you hear?

A. I did not keep a record of the whistles.

Q. Have you any record in your remarkable memory of the whistles?

A. Fog whistles blowing regularly.

Q. Did you hear any whistles, can you testify that you heard any whistles after the first bells to stop the engine?

A. No sir, I would not testify to that; I had my own business to attend to.

Q. Did you go outside afterwards, after the vessels stopped, or did you stay in the engine room?

A. I stayed in the lower engine room.

Q. So that you did not see the object that you came in collision with?

A. No sir.

Q. Know nothing about that except as reported by others.

A. No sir.

Q. You did not leave the engine room at any time before or immediately after the collision?

A. No sir.

Q. How long, in all, were you backing your ship. How long were you going full speed astern?

A. It was a minute or two minutes.

Q. Altogether, before you got the signal to stop?

A. Yes sir.

Q. You got the signal to stop and you obeyed it, did you?

A. Yes sir.

Q. How long after you got the signal to stop was it before you got another signal?

A. Oh, it was between a minute and two minutes, about.

Q. What signal was that?

A. That was the signal to go ahead, one bell to go ahead.

Q. Slow?

A. Yes sir.

Q. How long did you go under that slow signal?

A. That would be about forty seconds.

Q. Then what?

A. Then full speed ahead.

Q. Then full speed ahead.

A. The ordinary speed ahead.

Q. Then you continued that on into Seattle?

A. Yes sir.

Q. Without any other change?

A. Yes sir.

(Testimony of witness closed).

MR. HUGHES: After the engineer's log is produced I may want to recall this witness for further cross examination.

HARRY GATES, a witness called on behalf of the Libelant, being duly sworn, testified as follows:

Q. (Mr. Robinson). You were on board the *Rosalie* on the night of April 8th, 1911, when she came in collision with the tug and scow?

A. Yes sir.

Q. Were you on duty at the time?

A. Yes sir.

Q. Where were you, what were you doing?

A. I was at the wheel, steering.

Q. Who else was in the pilothouse, if anybody?

A. Captain Hanson.

Q. Was there anybody on the bow?

A. Yes sir.

Q. Who?

A. Loui was on the bow, Bongojard.

Q. Did you see West Point when you passed it that morning?

A. No sir, I did not see West Point when we passed it.

Q. Do you know about when you passed it?

A. I do not know the exact time. I know when we changed the course, we were at West Point then.

Q. Were you in a position to know what the signals were which were sent the engine room?

A. Yes sir.

Q. After you had passed West Point for sometime, did you have a report of a whistle from the lookout?

A. Yes sir.

Q. Did you hear that whistle yourself?

A. Yes sir.

Q. Do you know what was done by the captain at that time?

A. Yes, he stopped her.

Q. What did you do next, what did you recognize and see next, tell us all that happened.

A. He was drifting along; he was whistling all the time and could not get no answer and so he started ahead.

Q. How long did you go ahead?

A. Just went ahead, I should think about enough to get

started; then we got another whistle and he started to back.

Q. Then what happened?

A. Then we seen the redlight on the Tillicum.

Q. On the Tillicum?

A. Not on the Tillicum but on the scow. It looked to be a scow and the next thing I seen was the end of an oil tank.

Q. Oil tank?

A. Yes sir.

Q. And then what happened?

A. Then I seen the Tillicum, I seen the lights of the Tillicum.

Q. Then what happened after that?

A. Then the next I saw was—we backed—and the next thing I saw was the oil tank and it looked to me as though it was half overboard, it looked as though it was kind of over the front of the scow.

Q. Did you finally come in collision?

A. Come into collision?

Q. Yes.

A. Yes sir.

Q. About where did you hit her, or did she hit you, as the case may be?

A. Where they struck together I should judge was a little bit on this side of the redlight.

Q. (Mr. Hughes). By this side you mean toward the Tillicum?

A. Between the red light on the scow and the Tillicum.

Q. That would be on the starboard side of the scow?

A. Yes sir.

Q. (Mr. Robinson). How long had you been backing, in your opinion, before this collision occurred?

A. Must have been backing a minute; backed longer than we back at a landing.

Q. Do you know whether or not you had sternway or were stopped or had headway, or what your boat was doing at the time they came together?

A. I know we must have had sternway. The wheel had stopped kicking, and I had stood there and there was no strain on the wheel, so we must have had sternway.

Q. Any other reason for thinking so?

A. No sir.

Cross Examination:

Q. (Mr. Hughes). How long have you been a quartermaster—are you a quartermaster?

A. No sir, supposed to be lookout man.

- Q. Did not they have a quartermaster on that boat?
- A. No sir, not what they called a quartermaster.
- Q. How long had you been performing the duties of a quartermaster or standing at the wheel?
- A. About four years, off and on, altogether.
- Q. When did you take the wheel that night?
- A. I took it about five or ten minutes after four.
- Q. Had you had it previous to that time?
- A. Yes, I had it until 2 o'clock.
- Q. Where were you when you took it, do you remember where the boat was?
- A. Yes sir, a little past Apple Tree Point.
- Q. This side of Apple Tree Point.
- A. Yes sir.
- Q. What officer was in the wheelhouse?
- A. Captain Hanson was in the pilothouse.
- Q. He was the first mate of the boat, was he?
- A. Yes sir.
- Q. Had he given you any orders about the helm, what you should do with the wheel, prior to reaching West Point?
- A. No sir.
- Q. You did not change the course at all?
- A. Not from Apple Tree to West Point.
- Q. From the time you took the wheel at Apple Tree to West Point you did not change the course?
- A. No sir.
- Q. But you changed after you passed West Point?
- A. We changed it at West Point.
- Q. Did you change it at any time before the collision, change your wheel?
- A. At West Point I changed the course.
- Q. What change did you make at West Point?
- A. Changed the wheel over to starboard; I was steering south east half east.
- Q. What change did you make?
- A. About a point and a half, something like that.
- Q. What course did you steer after passing West Point?
- A. Southeast half east.
- Q. Captain Hanson gave you that order?
- A. Yes sir.
- Q. You say you did not see West Point light yourself?
- A. No sir.
- Q. Did he call your attention to the fact that you were passing West Point?
- A. No sir.
- Q. All you know was that he gave you the order to change.

A. Change the course.

Q. That is all the order he gave you?

A. Told me to starboard.

Q. Did he say how much?

A. No sir, he did not say how much. He put his time down and then told me south east half east.

Q. Now then after you had been running some little time the lookout called out what?

A. Whistle on the port bow.

Q. Did you hear it yourself?

A. Yes sir.

Q. Did it sound the same to you, as the lookout reported?

A. It seemed to me to be on the starboard bow from where I stood.

Q. You think the lookout was wrong?

A. I think the lookout was wrong.

Q. Did the captain, or mate, say anything?

A. He just reported it, that was all.

Q. Reported what?

A. He reported what the lookout reported to him.

Q. He reported the words "Whistle on the port bow"?

A. Yes sir.

Q. Did you mention to him that it sounded to you as if it was on the starboard bow?

A. No sir.

Q. You did not?

A. No sir.

Q. Did he give you any orders or instructions?

A. No sir.

Q. What did he say or do after reporting or repeating the call of the lookout?

A. Well, he stopped.

Q. What did he do?

A. He pulled the bell pull.

Q. Could you hear the jingle of the bell?

A. Yes sir, I could hear it.

Q. Do you know how many times it jingled?

A. Jingled twice.

Q. Twice in rapid succession?

A. Yes, rapid succession, just about that much between.

Q. Did he do anything else?

A. Then he kept blowing the whistle all the time.

Q. Now do you remember whether he blew his whistle after he gave the jingle bells, the two jingle bells?

A. He gave two jingle bells.

Q. After he rang the engineer to stop?

A. Yes, he blew the whistle then.

Q. Are you sure about that?

A. Yes sir.

Q. What whistle did he blow?

A. One whistle.

Q. One whistle?

A. Yes sir.

Q. How long was it before you heard any other whistle ahead of you?

A. Ahead of us? I did not hear any other whistle until after we had started to go ahead.

Q. Well, did the lookout report that?

A. Yes sir.

Q. What report did he make?

A. Whistle ahead.

Q. Did not he report a whistle on the port bow? You heard the testimony here, did not he report some whistle on the port bow?

A. I think he said a whistle ahead.

Q. What did the captain repeat that time?

A. He repeated whatever the lookout said.

Q. What was it he repeated?

A. I don't remember, I know he repeated it because he always does repeat it, whatever he said.

Q. Could you see any light?

A. At that time?

Q. Yes.

A. No sir.

Q. Did you hear that whistle?

A. Yes sir.

Q. Where did it appear to you to be?

A. Appeared to me to be on the starboard bow.

Q. How much on the starboard bow?

A. I should judge about a quarter of a point on the starboard bow.

Q. It appeared to you to be as much as a quarter of a point on the starboard bow?

A. Yes sir.

Q. Did you have any idea how far off that was?

A. No sir.

Q. Did you hear any echo from the shore?

A. No sir. Did not.

Q. What was the next thing that occurred now in the way of whistles or bells, after this second report of the lookout?

A. After the second report of the lookout?

Q. What was the next thing that occurred?

A. Why, he stopped the engines and backed them.

Q. I ask you what was the next thing that occurred, the captain did what?

A. He pulled the bell pull.

Q. How many times?

A. Three times.

Q. How soon after that second report of the lookout did he give these three bell pulls?

A. Just as soon as he could step back and pull them.

Q. Did he give you any order?

A. No sir.

Q. What was the next thing that occurred after that?

A. The next thing that occurred after that?

Q. Yes sir.

A. The next thing that occurred we heard them blow a towing whistle.

Q. You heard them blow a long and two short whistles?

A. Yes sir.

Q. How long was it after these bell cords were pulled the three times?

A. Might have been half a minute.

Q. Well, what was the next thing that occurred or that you heard or saw after the tug boat gave the three whistles?

A. The next thing I heard or saw was the redlight on the scow.

Q. Could you see the scow or only the redlight when you first saw it?

A. I saw the red light and the oil tank.

Q. You could see both of them at the same time.

A. At the same time.

Q. About how far distant did that appear to be?

A. Right in under the bow.

Q. Well, as much as seventy-five or a hundred feet away?

A. No, it did not look that far to me.

Q. Did you say anything?

A. No sir.

Q. Did the captain say or do anything?

A. Why, he just reached for his whistle cord.

Q. Before he whistled the tugboat gave another whistle?

A. The Tillicum gave a whistle, a danger signal.

Q. Whistled four blasts?

A. Whistled four blasts.

Q. And then your captain whistled four blasts, did he?

A. Yes, they were blowing the danger signal about the

same time. We were may be one whistle slower than they were.

Q. Now by that time could you see any more of the barge or could you see the lights of the Tillicum?

A. Yes sir, I could see the lights of the Tillicum.

Q. About the time she was blowing her danger signal?

A. Yes sir.

Q. You saw her lights?

A. Yes sir.

Q. How soon after that did the two ships come together, almost immediately?

A. Almost immediately.

Q. Could you see where your bow struck the tow?

A. I could not see exactly from where I was where she struck the tow, but I just guessed she struck half way, just a little bit to one side of the red light.

Q. That is a little toward the Tillicum?

A. Yes sir.

Q. That would be toward the starboard side of the tow?

A. Yes sir.

Q. And did it appear to swing the tow and the Tillicum around when you came together?

A. No sir. We just came together and were right off.

Q. You hit a sort of glancing blow?

A. Yes, just seemed to touch and then got off.

Q. Well, did they pull apart then, the two ships.

A. Pull apart?

Q. Separate?

A. Yes sir, separate.

Q. How did you separate from each other?

A. Why, we just went clear, that is all.

Q. Which way did your vessel go from the tug and the tow?

A. Our vessel came this way (showing).

Q. That does not mean anything by pointing. Which way?

A. Back towards West Point.

Q. Which way was the tow?

A. There was a thick fog and you could not tell about directions there.

Q. I did not ask that. Just confine yourself to the two objects. You can give us some idea. As you separated from the tow and the tug which way was the tow and the tug from your bow?

A. As they separated they were head and head.

Q. And as you kept getting further apart, which side of you did they appear to be on?

A. On the starboard side.

Q. As you kept separating the tug boat would then come between you and the tow, would it, the tow would be a little further off from you?

A. Yes sir.

Q. That is you were getting off further on the starboard side of the tug and the tug was on the starboard side of you?

A. Yes sir.

Q. And ahead of you at the same time?

A. No sir, she was going off on the side of us. I don't know how to explain it.

Q. Kept off to the starboard side?

A. Kept off to the starboard side, when we stopped, after backing she was right abreast of us.

Q. How far away?

A. I could not judge the distance. Just could make her out in the fog.

Q. Just make her out?

A. Yes.

Q. What else could you see?

A. Could see her red light.

Q. Well, did she have more than one red light?

A. Saw the red light and saw the green light, that is all I could see.

Q. Did she have more than one red light?

A. I did not notice the riding light.

Q. You say you saw her green light?

A. Yes sir.

Q. But you could not make out anything more than her lights?

A. No.

Q. That is there was so much fog there, it was so dark and thick that you could simply make out the lights through the fog, is that right?

A. Yes sir.

Redirect Examination:

Q. (Mr. Robinson). Mr. Gates, are you in the employ of the Inland Navigation company?

A. No sir.

Q. Or of any boat company?

A. No sir.

Q. What are you doing?

A. Working in a mill in West Seattle.

Q. Whose mill?

A. Schweiger and Nettleton's.

Q. How long have you been out of the employ of the Inland Navigation company?

A. Since the 17th of February.

Q. (Mr. Hughes). What are you doing in Schweiger & Nettleton's mill?

A. Taking lumber off the chain.

(Testimony of witness closed).

H. M. HENDRICKSON, a witness called on behalf of the libelant, being duly sworn, testified as follows:

Q. (Mr. Robinson). Were you aboard the *Rosalie* the night of the accident happened that we have been talking about?

A. Yes sir.

Q. What capacity?

A. Fireman.

Q. Is the *Rosalie* an oil burner?

A. Yes sir.

Q. Now did you have to make changes in feeding the fires when the engine is stopped or backing or that sort of thing?

A. Yes sir.

Q. Do you remember of this collision happening?

A. I do not remember just the time.

Q. Do you recall whether or not the engines were stopped sometime previously to this collision?

A. Yes sir.

Q. How do you know that?

A. I could see the engines, I am right forward of the engines.

Q. You could see them?

A. Yes sir.

Q. Can you tell if the engine is going ahead or going slow or going astern?

A. Yes sir.

Q. Did you know that there had been a collision?

A. No.

Q. After it happened, did you feel it down there?

A. Yes, I could feel it there.

Q. How had the engines been running immediately previous, I mean just before the shock.

A. She was not running full speed that we had been running before; we had slowed down a little after we left Apple Tree.

Q. You do not understand what I mean, I guess. Just before you felt the shock, how were the engines running?

A. Oh they were backing full speed astern.

Q. How do you know?

A. I seen them. I heard the bells given and I put my both fires on then.

Q. Previous to then what had the engines been doing?

A. They were stopped and backed and come ahead and then backed.

Q. Does that make a change in your fires?

A. Yes.

Q. Have you any recollection of about how long that backing took place that you speak of?

A. I judge about a minute and a half.

Q. How long do you think she had been stopped, the ship had been stopped before you got the bell to go ahead?

A. I could not tell.

Cross Examination:

Q. (Mr. Hughes). What makes you think it was a minute and a half?

A. That is my own judgment.

Q. After this lapse of time you could not form any judgment whether it was 30 seconds or 90 seconds, could you you?

A. I have that much remembrance anyhow.

Q. You had nothing to do with the operation of the engines at all?

A. I had to watch the boilers and keep up the steam.

Q. You kept the steam up all the time?

A. Yes sir.

Q. You had to keep up the steam just the same?

A. Yes sir.

(Testimony of witness closed).

CAPT. SAMUEL BARLOW, a witness called on behalf of the libellant, being duly sworn, testified as follows:

Q. (Mr. Robinson). You were master of the *Rosalie* at the time this collision happened that we have been talking about?

A. Yes sir.

Q. You were not on duty at the time, were you?

A. No sir.

Q. When did you go on deck?

A. Shortly after the accident occurred.

Q. Could you see the scow and the *Tillicum* at that time?

A. No.

Q. You could not see her?

A. No.

Q. And did you hear any of these whistles or anything?

A. No, I did not hear any of the whistles, I was asleep.

Q. Captain, how long had you been master in charge of the navigation of the *Rosalie*, one way or another, previous to this accident, how many years?

A. About six.

Q. You were very familiar with her operation then?

A. Yes sir.

Q. Suppose that the *Rosalie* was making a speed of between seven and eight knots an hour, then stop her engines for nearly a minute, then a kick ahead, then backing for a minute and a half or more, what would you say as to whether she would have headway, sternway or be stopped in the water?

A. She would have sternway.

Q. Captain, did you report this accident to the local Inspectors?

A. Yes sir.

Q. I ask you to examine that paper and ask you if that is a copy of the notice?

A. Yes, I believe that is it.

MR. ROBINSON: I offer this paper in evidence, merely to show that the accident was reported.

MR. HUGHES: I do not think it is competent or material. It is a mere self-serving declaration.

Paper marked libelants exhibit "A", filed and returned herewith.

Cross Examination:

Q. (Mr. Hughes). How long was it after the collision before you got on deck?

A. I don't know just how long it was, I could not say.

Q. Were you called?

A. Yes sir.

Q. Who called you?

A. Mr. Hanson.

Q. And you got up and dressed?

A. No, I came on deck first without dressing.

Q. Well, the tug and the tow were not in sight when you came on deck?

A. Well, they might have been in sight if I had examined but they were on the opposite side to my door when I came out of the room.

Q. Which side is your door on?

A. My door is on the port side.

Q. How long did you stay on deck?

A. Well, I just stood on deck a few minutes there talking to Hanson, asked if they were all right and if our boat was all right.

Q. Did you go around on the starboard of your boat?

A. No, I went out as far as the front of the pilothouse.

Q. Out in front of the pilothouse, did you?

A. Yes sir.

Q. On the bow of your boat?

A. Yes sir.

Q. And you did not see the lights of the Tillicum or the scow?

A. No sir.

Q. Did you examine your own bow to see whether you had any harm done?

A. No, but he sent somebody, I don't know who he sent.

Q. Did you stay on deck until your ship started ahead toward Seattle?

A. No, she was stopped then.

Q. You went back to your room?

A. I went back to my room.

Q. Before he started on?

A. Yes, then he started.

Q. Did you hear any conversation between Captain Hanson and the master of the tug?

A. Yes, I heard the master of the tug say he was all right.

Q. You could not see his boat when he was talking?

A. No, I did not see him because I had not got out of my room yet.

Q. Do you know how the tide was at that time?

A. No, I do not remember.

Q. Do not know whether it was ebbing or flooding?

A. No.

Q. If you had a flood tide what effect would that have on your speed?

A. It would not have any effect on the speed at all.

Q. Would it have any effect on the distance your boat would continue to go through the water after you stopped?

A. Well, no. It would have a difference over the ground but it would not have any difference in the water.

Q. Would it make any difference whether there was a flood or ebb tide as to whether your vessel would overcome her headway and get sternway quicker or not?

A. No, it would not make any difference.

Q. If you had a flood tide you would get sternway just as quick under the circumstances by stopping and backing?

A. In the water we would, we might not in an object like

that that was stationary, but in the water we would overcome that just about the same.

Q. The run of the tide would carry you right on even if your wheels were taking hold of the water?

A. We would be going the same in the water.

Q. Nevertheless if your wheels were taking hold and going astern, your vessel might still be carried forward with the tide, might it not?

A. It would be carried forward in the tide, but for any objects away from the bottom there would be no difference.

Q. How long would your vessel continue in motion, if you stopped her going at a speed of seven or eight knots an hour?

A. Continue in motion?

Q. Yes, how long would she have headway?

A. After we stopped?

Q. Yes, stop but do not change the helm at all?

A. There are different ways of stopping, do you mean stop the boat or stop the engine?

Q. Suppose you stop the engine and do not change the helm how long will you continue with headway, if your vessel has had a speed of seven or eight knots an hour?

A. Will depend on whether there is a wind or anything.

Q. In a quiet time when there is fog.

A. Well, sometimes there is wind when there is fog.

Q. Not usually is there? Not that night was there?

A. There was a little air, it was not much.

Q. In that kind of weather?

A. In that kind of weather she would she would carry her headway for about seven minutes.

Q. When you are making a landing, how long do you reverse your engines before you bring your ship up to the landing?

A. It all depends on the weather. If we have a headwind we do not reverse them quick; if we have a fair wind we reverse them quicker. It all depends whatever the weather is.

Q. About how long, in ordinary fair weather, calm weather?

A. In calm weather we figure on making a landing, and I make a landing right along in four minutes from the time I slow down until I stop and take the slip.

Q. Do you have to back or just slow down?

A. We back. We have to have headway enough to go to the dock to steer her.

Q. If you were going full speed ahead and you were to

stop and give a signal full speed astern, how long would it take you before you were making sternway?

A. From full speed ahead?

Q. Yes.

A. A little less than two minutes.

Q. Can you stop her and overcome her momentum and actually be making sternway in two minutes?

A. Yes sir, in less than two minutes.

Q. Do you ever go into the docks in that way?

A. Into the docks?

Q. Into landings?

A. Well, we go in to the docks lots of times where there is a tide running and work in at considerable headway and when the wind is blowing.

Q. How long will you reverse your engines under these circumstances?

A. Well, we would reverse in about—

Q. How long would you keep your engines reversed full speed?

A. Well from what? Slow down or from stop?

Q. Well, we have had some witnesses who undertook to fix the time by your customary habit in entering a dock. How long do you run your engines full speed astern to stop your boat?

A. Where from, from full speed or slow down?

Q. From full speed?

A. From full speed?

Q. How long do you back her at the docks, when you are approaching the docks, how long, commonly?

A. Commonly back her about three-quarters of a minute or sometimes a minute.

Q. From half a minute to a minute?

A. Owing to conditions. There is always different conditions about landing a boat.

Q. It is very unusual to back her a half a minute, is it not?

A. Depends on how much the speed is.

Q. In approaching a dock, coming up to your docks and making your landings, it is a very unusual thing for to have your engines reversed for half a minute?

A. No, sometimes we only give her a few turns.

Q. Commonly you mean you reverse her but a few seconds, is not that true?

A. A few seconds? We reverse her more than that.

Q. Ordinarily less than half a minute, a quarter of a minute?

A. It is always more than half a minute. When we make an ordinary landing it is over half a minute.

(Testimony of witness closed).

Hearing adjourned.

SEATTLE, WASHINGTON, *June 6, 1913.*

Present: Mr. Robinson, for the libelant. Mr. Hughes, for the claimant and cross libelant.

JOSHUA GREEN, a witness called on behalf of the libelant, being duly sworn, testified as follows:

Q. (Mr. Robinson). You are the President of the Inland Navigation company, the libelant in this suit?

A. Yes.

Q. And were, in April, 1911, when a collision occurred between the Rosalie and an unnamed scow in tow of the Tillicum?

A. Yes sir.

Q. Did you see the Rosalie on the morning after that collision or shortly after?

A. Yes sir.

Q. Tell, in a general way what the damage appeared to you to be?

A. The stem was broken and the ends of the planking were mashed and bruised up, the planking of the ship. The stem was knocked off practically and the wood ends, I think that is the technical term, the wood ends, that is the end of the planking that comes forward right behind the stem.

Q. (Mr. Hughes). Do you mean the deck plank?

A. No, the whole planking of the steamer.

Q. (Mr. Robinson). Did you consider this injury serious enough to call for a survey?

A. Yes sir.

Q. Did you have a survey made?

A. Yes.

Q. Who did you call in for that purpose?

A. I called in Captain Fowler and Captain Walker.

Q. Frank Walker?

A. Yes sir.

(MR. ROBINSON: I will withdraw the witness temporarily and recall him after I have presented other testimony.)

CAPT. JAMES FOWLER, a witness called on behalf of the libelant, being duly sworn, testified as follows:

Q. (Mr. Robinson). Your name is Capt. James Fowler?

A. James Fowler.

Q. What is your occupation?

A. Surveyor to Lloyd's Register, and Lloyd's agent.

Q. And you have been in that business for sometime?

A. For over thirteen years.

Q. Did you make a survey of the Rosalie about April 9th, 1911, after she had been in collision with a scow?

A. I did.

Q. Will you tell us, captain, what you found the damage was at that time?

A. She was lying at the dock and I could see from the water line down she was severely injured about the stem. She was then placed in the dry dock, and we found the stem iron broken, and the stem split and bruised from the guard down to the forefoot. A number of the sheets of yellow metal in that vicinity damaged. When the stem was split out we found the apron inside also split and broken. On the starboard side the planking was split and bruised and had to be removed to renew the apron.

Q. Was any of the metal lost, captain?

A. Some of the sheets, of course they were useless, torn and useless and they had to be replaced with new; some of it went back on again.

Q. Did you make recommendation as to the repairs to be made?

A. Yes sir.

Q. Substantially as you have detailed. Did you see the ship again after the repairs had been made.

A. Yes.

Q. Were the repairs made that you had recommended, and as you had recommended them?

A. Exactly, in every detail.

Cross Examination:

Q. (Mr. Hughes). Were any further repairs made?

A. No further repairs made to that part of the vessel.

Q. To the stem, no further repairs were made than you recommended?

A. No.

Q. Were there any other repairs made to the vessel while in the dock that you know of?

A. No, I do not know.

Q. Have you ever surveyed this vessel before?

A. Yes sir.

Q. Is she surveyed and classified by Lloyd's?

A. I beg pardon?

Q. Does she have a Lloyd's survey?

A. No she is underwritten by Lloyd's underwriters.

Q. You surveyed her for the purpose of underwriting.

A. I surveyed her—it is my duty in case a ship is under-written by Lloyd's, when they are damaged, to have repairs made so as to replace the vessel in the same condition as she was before, at the least cost.

Q. Did you have insurance on her at this time?

A. I do not know. I believe so, or else I would not have been called in.

Q. By whom were you called in?

A. By the agents.

Q. By the agent of Lloyd's?

A. Yes.

Q. So you made your survey as Lloyd's agent and at the direction of Lloyd's agency and not under the employment of Mr. Green?

A. Not under the employment of Mr. Green.

Q. Do you know whether that company paid the liability on the face of the policy for the bill of repairs rendered?

A. Yes sir, for I approved the bills.

Q. Did you approve these bills?

A. Yes sir.

Q. These bills were submitted to you after the repairs were made?

A. Yes.

Q. And approved by you as a repair bill incident to the collision?

A. Of the accident, yes.

Q. How long before that had you surveyed the *Rosalie*?

A. I cannot recollect just now, I have surveyed her so many times.

Q. How long have you known the *Rosalie*?

A. I have known the *Rosalie* for the last—had to do with her for the last 12 years.

Q. How old is she?

A. I could not tell.

Q. Do not know anything about that. What kind of a frame has she?

A. I only speak from what I know; I have dealt with her for 12 years.

Q. From what you know of her, what sort of frame has she?

A. She is a good ship.

Redirect Examination:

Q. (Mr. Robinson). Then, if I understand you, you were not surveying her for the Inland Navigation company at all, you represented the insurance?

A. Yes sir.

Q. Do you know who is their surveyor, ordinarily?

A. Frank Walker.

(Witness excused from the stand).

C. H. J. STOLTENBERG, a witness called on behalf of the libellant, being duly sworn, testified as follows:

Q. (Mr. Robinson). You are secretary and treasurer of the Inland Navigation company?

A. Yes sir.

Q. And have been for a number of years?

A. Yes sir.

Q. And were at the time the Rosalie came in collision with the Tillicum and scow?

A. Yes sir.

Q. Have you in your possession the bill which was rendered by the Heffernen Dry Dock company for the repairs made to the Rosalie at that time?

A. Yes, I have.

Q. And was that bill paid by your company?

A. It was.

Q. And have you also the receipt of the Heffernen Dry Dock company?

A. Yes sir.

Q. And the statement of the bill?

A. Yes sir.

Q. And these are all bound together there in one paper?

A. Yes sir.

MR. ROBINSON: I offer these papers identified by the witness in evidence.

Papers marked libellant's exhibit "B", filed and returned herewith.

Q. Mr. Stoltenberg, do you recollect how many days the Rosalie was laid off, as a result of this accident?

A. Yes, from the 19th to the 16th of April.

Q. Where does the Rosalie run, what is her ordinary run?

A. San Juan islands.

Q. San Juan island route.

A. Yes sir.

Q. Does she carry the mail, or did she at the time of the accident?

A. Yes, she is a mail carrier, has a mail contract.

Q. Was it necessary for you to keep a boat on the route at that time?

A. Yes sir.

Q. What about the wages of the crew of the *Rosalie* during these eight days, were you compelled to keep a crew?

A. Yes sir, we have to have a crew on while laid up undergoing repairs.

Q. That is their wages go on during that time?

A. Yes, a certain number of the crew.

Q. I will ask you, Mr. Stoltenberg, if you have had made up by your head book keeper, and also have examined the original records yourself, in your office, and can tell us in the aggregate what amount of wages that crew were paid during the eight days?

A. We kept seven men of the crew on the ship during the eight days and paid them \$130.80.

MR. ROBINSON: I offer this sheet showing the statement taken from the records of the office as to the crew and amount paid, in evidence.

Paper marked libellant's exhibit "C", filed and returned herewith.

Q. I understood you to say that it was necessary to keep a boat on that run?

A. Yes.

Q. Did you put another boat on the run?

A. Yes sir. The *Waialeale*.

Q. Do you know what the charter value of the *Waialeale* is?

MR. HUGHES: I object as immaterial.

A. Two hundred dollars per day.

Q. She belongs to your company?

A. Yes sir.

Q. Do you know what the actual crew expense of the *Waialeale* is?

MR. HUGHES: I object as immaterial.

A. \$140 to \$145 a day.

Cross Examination:

Q. (Mr. Hughes). What was the *Waialeale* doing prior to the time she was put on the run?

A. Spare boat.

Q. You kept her as a spare boat?

A. Generally as a spare boat; sometimes a regular run, and sometimes used as a spare boat.

Q. During that period she was not on any regular run?

A. No.

Q. And was held and used to fill in when the occasion arises because of your having to lay up some other boat on a run?

A. Yes sir.

Q. That is she had no regular run, but was used to take the place of boats that had a regular run during periods of their being laid up?

A. She did not have a regular run during that time.

Q. During that period she was used as a spare boat?

A. Yes sir.

Q. And you so used her at this time in consequence of this injury to the Rosalie?

A. Yes sir.

Q. The Waialeale was a much larger ship than the Rosalie?

A. A little larger, I think.

Q. She used to run between here and the Sandwich Islands?

A. She ran locally around the Sandwich Islands.

Q. Did your company pay the amount of this bill to the Heffernan Dry Dock company?

A. Yes sir.

Q. Did they collect the amount of it as insurance?

A. I could not state; I do not remember about that.

Q. Did not you attend to that?

A. I would have to look at the records first to see.

Q. To the best of your recollection what is the fact?

A. I could not tell you; I would have to look it up.

Q. You carried full insurance, didn't you?

A. A certain per centage of insurance, not full. We only insured certain vessels for a certain amount.

Q. That was sufficient to cover this injury?

A. That I could not tell you. I would have to look it up.

Q. Do you know whether the insurance companies accepted this statement and this bill of expenditure as a basis for their settlement?

A. That I could not tell you.

Q. How long prior to this time had the Rosalie been in the Dry Dock?

A. I could not tell you.

Q. How long had it been since she had undergone any repairs?

A. I could not tell you that.

Q. Anybody about your concern that would know?

A. I could tell by looking at the records. That is back over two years now.

Q. Did you give attention supervising the repairs?

A. No sir.

Q. You do not know personally what repairs were actually made?

A. Not outside of that bill.

Q. And your knowledge is from the fact that this bill was received and paid by you?

A. Yes sir, O. K'd.

Q. You do not know then whether it included anything else than the repairs necessary from the collision or not?

A. That is not my part of the business.

Q. The crew you speak of, a list of which was introduced here as exhibit "C", was that the crew that remained on board the *Rosalie* during the period of her repairs?

A. Yes sir.

Q. And the crew that remained on the ship rendered such assistance as it could.

A. Yes sir.

Q. And that entire number was all the time aboard the *Rosalie* and rendered such assistance and did such work as they were requested to do during the period of repair?

A. Yes, as shown on that list; some of the men were not on there all the time, not the full seven. It is shown there.

Q. In other words, what I am trying to get at, these men did not do other work for the company at this time for which they were paid as shown by this exhibit?

A. No sir, they were on this vessel.

Q. And were paid at the rate of wages shown here?

A. Yes sir.

(Testimony of witness closed).

CAPT. JAMES FOWLER, recalled, testified on behalf of the libellant as follows:

Q. (Mr. Robinson). Captain, showing you that part of libellant's exhibit "B" which purports to be the bill from the Heffernan Dry Dock company, I will ask you to examine that, reading the heading and see whether that is the bill for repairs on the survey which you have testified about?

A. Yes sir, that is the bill.

Q. Does that heading there describe the repairs you described, the same items which you recommended should be made at the time?

A. Yes sir.

Cross Examination:

Q. (Mr. Hughes). I understood you to say that you O. K'd the bill. Do you find your O. K. on that bill?

A. No sir, not on that one.

Q. Without having the bill you O. K.'d, could you speak from memory, after this lapse of time, captain?

A. I remember the heading there is exactly as the damage.

Q. The heading, but the items, you could not remember these after this length of time?

A. I remember the whole thing. I do not know about the items, I am only looking at the heading here. I believe from what I see there of the time and material that that is the bill that I approved.

(Testimony of witness closed).

JOSHUA GREEN, recalled on behalf of the libellant, testified as follows:

Q. Mr. Robinson). Mr. Green is the Waialeale very much the same class boat as the Rosalie or not?

A. I expect the Waialeale will carry more than the Rosalie but she will not carry any more passengers; she will carry a little more freight.

Q. Carry any more crew?

A. No; about the same sized crew. She has more freight capacity, but is not quite as fast a boat as the Rosalie. You might call her a little bigger, but they are just about the same class with each other; they are in the same trade.

Q. What would you say the charter value of the Waialeale is?

Mr. HUGHES: I object as immaterial.

A. We have a regular price that we fix on these boats; charter at a fixed price.

Q. What is that price?

A. Two hundred dollars for the Waialeale.

Q. What is the operating cost per day of the Waialeale?

A. Depends on the run she is operating on. From \$130 to \$150, possibly \$160 a day. About \$135 to \$140 per day.

Q. Mr. Green, who do you call your company surveyor; who ordinarily does your surveying?

A. Frank Walker.

Q. Did Frank Walker for you, or both of you, see this boat when she was in dry dock, and look after the repairs?

A. Yes sir.

Q. Did you personally see that the repairs were made?

A. Yes sir.

Q. Did Mr. Walker supervise it at the time?

A. Yes. I usually go down to the dry dock and see that the repairs are being made. When I do not go Mr. Burns, our general manager himself with Mr. Frank Walker whose business it is to see that it is done. And the underwriters

usually call in their own surveyor, which in this instance happened to be Capt. Fowler; in some instances captain Gibbs; there are two or three surveyors here. Frank Walker is our Company man, paid by our company and looks out for the company's business.

Q. Do you know, or not, whether there were any other repairs made on the *Rosalie* at that time?

A. I think there were. This bill covers the actual repairs to the stem that were caused by this accident only. Now I think there were some other repairs made. When a boat gets on a dry dock for anything wrong, we fix up everything. The accident must have its own particular bill and particular survey, and this bill covers that accident in the collision with the *Rosalie* and *Tillicum*, nothing else.

Cross Examination:

Q. (Mr. Hughes). Mr. Green, did you have a separate bill for the other repairs made at this time?

A. Yes, if there were any other repairs made, and I think there were. They were not heavy repairs. In fact, I think I wrote you at the time that the whole bill amounted to about five thousand dollars. In looking that up I found that there were some of these repairs that had nothing to do with this collision at all. Probably repairs to the engine or some part of the stern, that were not connected with this.

Q. Did the insurance company settle with you for the insurance, on the basis of this bill?

A. I do not know whether they did or not. I do not know whether we have made any insurance collection on that, but if they settled with us at all it would be on that bill.

Q. If you do not know, your book keepers would know?

A. Yes sir, I suppose that they made a claim for the insurance. I know it sometimes takes a year and sometimes five, to get our collections from the underwriters. But in a collision case we never collect in full. For instance, I might say that the *Rosalie* is insured for 65% of her value, of her full value. In case of a claim, the underwriters would pay us sixty-five per cent of the damage in the case, then they would deduct one quarter of that 65% in a collision. You only collect three fourths of your collision damage. You would collect on 65% less one quarter and they would take a third off for the new replacing the old. Which would leave you, if we put in a claim, one quarter of sixty-five per cent and thirty-three and a third per cent off that. So you get from the underwriters a very small portion.

Q. You mean three quarters of sixty five per cent, less thirty three and a third.

A. Yes sir.

Q. Now they deduct thirty three and a third because they put in new materials instead of old which would make the ship better and stronger?

A. They claim so, but as a matter of fact it is not, because the new material they put in does not last any longer than the balance of the old material of the vessel; but that is a provision in insurance.

Q. Do you know whether this is a correct bill of the cost of the repairs caused by this collision?

A. I am sure it is, for both the surveyors O. K'd the bill and that it is absolutely correct.

Q. When you speak of the charter price you put on your boats, that is when they are used for a day or two at a time on special runs?

A. Yes, or thirty days we probably would reduce it a little, but very little. We are entitled to twenty five per cent profit for the chartered boat. We have a regular set price on these boats that we charter them at, and we charter them to outsiders the same as we do to the company in any case.

Q. You find it necessary to keep a boat like the Waialeale to take the place of the other boats when they are laid up for repairs or accidents or anything of that kind?

A. Well, we do not keep it for that purpose. We find that we have more boats idle in the winter that we cannot run than in the summer. We cannot run as many boats in the winter as in the summer; we only keep as many boats in the summer as we actually operate in the busy season. But in a wider sense, some of these boats are necessarily laid up, and we find it necessary to have some of them laid up pretty nearly all the time, in order to take care of the mail routes. And all except three or four months in the summer time we are having a boat laid up. This Waialeale is on a regular mail route to Clallam Bay and return, but in the winter time she probably will be laid up as a spare boat. Everything we have now is running except the Chippawa and possibly the City of Everett.

(Testimony of witness closed).

Libellant rests

Hearing adjourned.

SEATTLE, WASHINGTON, September 5, 1913.

Present: Mr. Robinson for the libellant. Mr. Hughes for the claimant.

Claimant and Cross-Libelant's Testimony.

Capt. E. W. CHARLESWORTH, a witness called on behalf of the Claimant and cross-libelant, being duly sworn testified as follows:

Q. (Mr. Hughes). What is your business?

A. Master mariner.

Q. How long have you been a master mariner?

A. Some 14 years.

Q. Do you hold a master's license on the Inland Waters of Puget Sound?

A. Yes sir.

Q. How long have you held a master's license on Puget Sound and tributary waters?

A. Fourteen years.

Q. In what service have you been engaged during that time?

A. Master and pilot.

Q. On what waters.

A. Puget Sound and the adjacent inland waters; coast-wise to Cape Flattery.

Q. In the month of April 1911 of what vessel were you master?

A. The tug Tillicum.

Q. The tug Tillicum belonged then and still does to the Stimson Mill company?

A. Yes sir.

Q. How long had you been master of the tug Tillicum prior to that time?

A. Since 1903, the first day of April.

Q. Are you still master of the Tillicum?

A. Yes sir.

Q. Who was mate in 1911?

A. A. W. Anderson.

Q. How long had he been with you as mate on the Tillicum prior to the 8th of April, 1911?

A. I could not tell you just exactly.

Q. Is he still with you as mate of the Tillicum?

A. Not now.

Q. He is not?

A. No sir.

Q. You are still master of the Tillicum.

A. Yes sir.

Q. The tug Tillicum—I will ask you if the following statement contained in the libel as descriptive of the Tillicum is correct: She is a steam tug 87½ feet in length, 19½ feet in breadth, and draft 10 feet 6 inches, and 160 tons gross tonnage?

A. Yes sir.

Q. And on April 8th did she have a barge in tow, Stimson's barge No. 8?

A. Yes sir.

Q. The size of that barge is 100 feet in length and 28 feet in breadth.

A. Yes 100 feet long and 28 feet wide over the outside of everything.

Q. Now you may state whether you started on the morning of April 8th 1911 with the barge, Stimson barge No. 8, as a tow, if so from what wharf and at what hour?

A. It was April 8th 1911, we left the Standard Oil Dock at 4:15 a. m.

Q. How was the barge made fast?

A. Port side.

Q. State how it was situated on your port side? Lashed to your port side?

A. Lashed on the port side about thirty feet forward of the Tillicum.

Q. The bow of the barge was about 30 feet forward of the bow of the Tillicum?

A. Yes sir.

Q. What load did the barge carry?

A. Two oil tanks, oil cars.

Q. Were they oil cars, tank cars?

A. Yes sir.

Q. On regular cars with tanks.

A. I don't know what you call it, oil tanks or oil cars. The tanks are on the cars.

Q. How were they loaded on there?

A. They are loaded on a railroad track that runs on it, on wheels.

Q. A railroad track that runs direct in the center of the barge and they are run right on that track and made fast with chains on the track?

A. Yes sir.

Q. You left, you say, at 4:15.

A. 4:15 a. m.

Q. Where were you tow this barge with the oil tanks?

A. Marysville.

Q. What was the weather?

A. Thick fog.

Q. Now you proceeded from the port of Seattle to make West Point light first, did you not, on that trip?

A. Four Mile rock.

Q. Four Mile Rock?

A. Yes.

Q. There is no light at Four Mile Rock?

A. No sir.

Q. How do you locate Four Mile Rock in a fog?

A. By the whistle, get an echo off the place.

Q. Four Mile Rock is off Magnolia Bluff?

A. Yes sir.

Q. What speed were you running from the time you left and got under way until you picked up your echo at Four Mile Rock?

A. I judge about five miles an hour.

Q. Fog continuing all the time?

A. Yes sir.

Q. What whistles did you give?

A. One long followed by two short, every minute.

Q. Is that the regular fog signal for a tug with a tow?

A. Yes.

Q. Now, after picking up that echo from Four Mile Rock, what did you do?

A. Slowed down to about three miles an hour.

Q. For what purpose?

A. To locate the position and change course for West Point light house.

Q. How did you locate the position in the fog?

A. By this echo off the bluff.

Q. Ran slow along there so as to get your echo from the bluff?

A. Yes sir.

Q. And located yourself with reference to West Point light how?

A. By the sounding of the whistle.

Q. And this echo.

A. Yes.

Q. And you are able to tell where you are when you lose the echo, so that you can change your course for West Point?

A. Yes sir.

Q. And so you can round West Point.

A. Yes sir.

Q. What course were you on?

A. I do not know.

Q. Who would know?

A. The mate, who was steering.

Q. The mate is here?

A. Yes sir.

Q. Now, how long after you were running at your slow

speed and hearing your echos from the bluff, before anything occurred?

A. I should judge in the neighborhood of about five minutes.

Q. About what speed would that be that you were running?

A. About three miles an hour, as we slowed up.

Q. What then happened, captain.

A. We really got an echo dead ahead.

Q. Had you heard any other fog signal ahead of you?

A. No sir.

Q. What echo did you get ahead of you?

A. Some floating object.

Q. An echo from some floating object.

A. Yes.

Q. An echo of what?

A. I judged a steamer.

Q. I mean what was it echoed, not what was the object from which your echo came, but what was it you got the echo of? You had been getting echos from the bank?

A. Yes.

Q. What echos did you get from the bank, echos of your own whistle?

A. Yes, steam whistle.

Q. What echo did you get from ahead of you?

A. From the whistle.

Q. Echo of your own whistle.

A. Yes sir.

Q. Well, you got an echo after you sounded your fog whistle, you heard the echo ahead of you?

A. Yes, from the whistle.

Q. From some object ahead of you?

A. Yes.

Q. What did you take that to be?

A. A steamer.

Q. You knew there could not be any land ahead of you?

A. No sir.

Q. What did you do as soon as you got the echo ahead of you?

A. Stopped her.

Q. Well, did you signal to the engineer?

A. Yes sir.

Q. What signal did you give?

A. Stop bell.

Q. What is that?

A. One bell.

Q. Did you see any object at that time ahead of you?

A. No sir.

Q. Who was on the lookout with you?

A. I was the only one on the lookout.

Q. Where were you?

A. In the pilot house.

Q. Who else was in the pilot house?

A. The mate.

Q. Was he on duty in the pilot house also?

A. Yes sir.

Q. How is the pilot house constructed with reference to seeing ahead, open windows?

A. Open windows, yes.

Q. The windows down?

A. Yes sir.

Q. So that you could see ahead of you, both you and the mate?

A. I do not know how the mate's window was, whether open or not. I had two windows down on the port side.

Q. Well, after getting an echo from your fog whistle, did you proceed until you gave another fog whistle? Did you give any other fog whistle?

A. Yes sir.

Q. In the mean time did you hear any fog whistle ahead of you?

A. No sir.

Q. About how long after the first fog whistle was it until you gave the second fog whistle, that is the first one from which you got the echo ahead?

A. Somewhere around a minute.

Q. And did you hear an echo from ahead of you from your whistle?

A. Yes sir.

Q. What did you do then, or what happened then?

A. Well, the loom of the lights of the *Rosalie* loomed right ahead of us. I gave full speed astern.

Q. You gave what?

A. Full speed astern.

Q. What else?

A. Immediately I gave a danger whistle.

Q. What is that?

A. Four blasts of the steam whistle.

Q. Did the *Rosalie* answer it?

A. Yes sir.

Q. Now up to the time you heard an answer to your danger whistle, had you heard any whistles from the *Rosalie* ahead of you?

A. No sir.

Q. What was the next thing you did?

A. Gave three blasts of the whistle notifying the man in the wheelhouse I was going full speed astern.

Q. Three blasts of your whistle would inform the Rosalie that you were going astern full speed, would it?

A. Yes.

Q. Now what is the next thing that occurred?

A. Then followed the collision. The collision occurred after the three blasts of the whistle.

Q. Well, about how long did it seem to you after she loomed up and the danger signal and three blasts were given, before the collision?

A. Just a few seconds, a few minutes, I could not tell just how long it was. That is pretty hard to say just how long it did take. It was not but a very short time after the three blasts were given.

Q. About how many seconds did it seem to you to be. Of course we know you cannot tell very accurately.

A. I cannot say how long.

Q. Well, about how far away did the Rosalie appear to you to be when her lights first came out before you?

A. I cannot say that. It was deceiving in the fog, awfully deceiving, pretty hard to judge distance in the fog. A person to tell exact would have to have a watch in his hand all the time.

Q. Could you tell whether at the time or prior to the time of the collision, your vessel was making sternway?

A. I did not understand you.

Q. Was your vessel going astern at or prior to the time of the collision?

A. Yes, she was going astern before the collision.

Q. Before the collision.

A. Yes sir.

Q. About how long before the collision, about how many seconds would you say, I mean, making sternway?

A. Forty or fifty seconds, something like that. It is hard to tell the time.

Q. Now how could you tell that she was making sternway?

A. The water was leaving her, she was going astern; you could tell by the foam in front of us.

Q. When you are reversed full speed astern, how does your boat, the Tillicum, when she has a tow on her port side, swing?

A. Swings to starboard; always swings to starboard.

Q. The tow this time was on the port side?

A. Yes sir.

Q. How did the *Rosalie* appear to strike you, and how did the two boats appear to act when they came together?

A. Head on.

Q. Yes, but were you swung by the collision any?

A. Swung to starboard, yes.

Q. Swung bow on around.

A. Swung around after the collision with the *Rosalie* hitting helped swing her around.

Q. Did the collision appear to be severe, was it a heavy shock?

A. Yes sir.

Q. What did the *Rosalie* do?

A. She backed off in the fog, backed away from us after the collision and proceeded to Seattle.

Q. Did she come up and speak to you again before she proceeded to Seattle?

A. She never came near, she backed off far enough so that she could hear us talk, but never came near us after the collision.

Q. But she was near enough to be in sight?

A. We could not see her on account of the fog; the fog was thick.

Q. You could see the lights?

A. We could see the loom of her.

Q. Which side of you was she on?

A. The starboard side.

Q. And you could hear her officers speak to you?

A. Yes sir.

Q. And ask you if you were injured, did he?

A. I asked him.

Q. What did he say?

A. I asked him, I says, are you all right, captain. Sam Barlow was on her and I knew him well, and I says, are you all right, and he says are you all right, and I says I am all right but you knocked the tank in the bay, one of the cars off the scow, and they proceeded to Seattle.

Q. What did you do after that?

A. I turned the scow around and proceeded to Ballard.

Q. Did you examine the scow and her cargo to see——

A. We lashed the tanks in case of any more jars so that we would not lose them overboard.

Q. Did you go aboard and examine her before you started ahead?

A. Yes sir.

Q. Now what I want to get at is, what condition you found things in right after the collision on the barge?

A. We found one of the stanchions broke on the starboard side of the scow; all the chain lashings, eight lashings of chain, big, heavy galvanized chain and turnbuckles all broke, and the two front trucks of the tank were lost off the boat and one of the tanks was hanging over the end of the barge.

Q. In other words, when the collision occurred the car broke these chains and went forward far enough to drop the front wheels?

A. Yes, and they dropped off into the bay; the two front axles dropped in the bay and the wheels and the bunkers.

Q. But the tank itself, did you lose that off into the bay?

A. The tank was hanging over in this position, like that. (Showing).

Q. But it did not drop into the bay?

A. No.

Q. It hung over the edge of the barge?

A. After the collision we lashed this tank on the barge so that we would not lose it.

Q. Captain, did you then, or after you got into Ballard, examine the front of your barge to see how the collision occurred?

A. Yes sir.

Q. What was the appearance of the front of the barge?

A. It was all smashed up, smashed in in the bow.

Q. Where did the bow of the *Rosalie* strike the barge, what part of the barge?

A. On the starboard corner.

Q. How near to the extreme corner?

A. I should judge from two and a half to three feet from the corner. I do not know exactly, I never measured it, but I should judge about that, two and a half feet.

Q. Knocked off the iron there?

A. Yes sir.

Q. Making a dent in the barge.

A. Yes sir.

Cross Examination:

Q. (Mr. Robinson). Captain Charlesworth, how much of a crew did you have on that morning?

A. Eight of a crew, that is all told.

Q. How many men were on duty?

A. Four.

Q. Where were they?

A. Two in the pilot house and two in the engine room.

Q. Two in the pilot house and two in the engine room?

A. Yes sir.

Q. These tank cars were one ahead of the other, single file, on the barge, I suppose?

A. Yes sir.

Q. And how near the front of the barge did they come, did they come right up to the front?

A. No sir.

Q. About how far back?

A. About fifteen feet from the head end.

Q. About fifteen feet from the head end?

A. Yes sir.

Q. Then I suppose the force of the collision broke the lashing and ran them up ahead?

A. Yes sir.

Q. You said, I believe, that the tug was lashed thirty feet back of the barge, about?

A. Yes sir.

Q. Did you mean the bow of the tug?

A. Yes sir.

Mr. HUGHES: The tug was not lashed to the barge, but the barge to the tug.

Q. Thirty feet ahead of the tug.

A. The barge was about like this (showing) about thirty feet forward here.

Q. How far back would it be from the bow of the tug to your pilot house?

A. I never measured.

Q. Just guess at it, just give what you think is right.

A. About twelve feet.

Q. And you stood in the pilot house above the water, captain, about how high would your head be from the water, standing in the pilot house?

A. Sixteen feet, something like that; she has a pretty high pilothouse.

Q. How high would these tank cars be set up on deck there? Could you see over the top of these cars?

A. Yes.

Q. How high does the barge stand out of the water when she is loaded?

A. When she is heavy loaded?

Q. As she was then.

A. About four feet aft and six feet forward.

Q. How high is the tank car?

A. It would be about 14 feet to the top from the water's edge.

Q. You are counting the tank and the barge now?

A. Yes sir. It is up high enough so that I can look clear of it from the pilot house, I can look over the barge.

Q. That is with the cars on it.

A. Yes, with the cars on it.

Q. You would not be much more than able to, just about look over it?

A. You have got plenty of room to look over it.

Q. There was nobody on the barge at all, was there?

A. No sir.

Q. Now did you have any light on the barge?

A. Yes sir.

Q. What was it?

A. Red light.

Q. Where was it?

A. On the port corner, forward, port bow.

Q. Not in the middle?

A. No sir.

Q. Now you said, I believe, that you were making about five miles an hour on this morning, from the Standard Oil dock up to the vicinity of somewhere——

A. I should judge somewheres about five miles an hour.

Q. I suppose that was about as good as you could do?

A. That is the best she could do, is five miles an hour.

Q. And then you were stopped for how long? Were you stopped or going slow, rather, for about how long?

A. We slowed down in the neighborhood of five minutes.

Q. Was that for the purpose of getting an echo, as I understood?

A. Yes sir.

Q. What kind of whistles were you blowing to get that echo?

A. Fog whistles.

Q. You were getting echos from one long and two short blasts?

A. Yes sir.

Q. Did you blow any signal whistle at any time?

A. No sir.

Q. Did you hear any other boats around there at all?

A. No sir.

Q. And throughout all this, or near the time of the accident, the only whistles you heard were the whistles of your own boat and the danger signal of the *Rosalie* about the time you came together?

A. Yes sir.

Q. What did you do when you got that echo that you testified to, the first time?

A. Stopped the boat.

Q. That is, you mean you stopped the engines.

A. Stopped the engines, yes.

Q. And then you drifted along until you got the second echo?

A. Yes sir.

Q. Then what did you do?

A. Full speed astern.

Q. How far do you think you could see that night, captain, to get the loom, how far do you think she was away when you first saw her, the *Rosalie*?

A. I should judge about 200 feet when I got the first loom, first sight of her. I could not say exactly, it is hard to say the distance in the fog.

Q. We all understand that, captain. Was it an especially heavy fog or an average fog?

A. Ordinary fog.

Q. Of course it was too early to get any light from the morning?

A. Just breaking at 5:15 in the morning.

Q. Do you know accurately when that collision happened, when you say 5:15, do you know to the minute?

A. In the pilot house in the *Tillicum*, by our clock, yes.

Q. That was the time by your clock?

A. Yes sir.

Q. Now, captain, you were asked about their standing by there. There was not anything that could be done?

A. No sir.

Q. You do not mean to convey the idea that they went into Seattle and deserted you, or anything like that?

A. No sir.

Redirect Examination:

Q. (Mr. Hughes). Could you tell about how far you were southeast of West Point light when this collision occurred?

A. I judge a mile and a half or two miles. I have no idea exactly how far it was.

Q. No way of telling exactly?

A. No sir.

Q. But you did note the time, did you?

A. Yes sir, 5:15 a. m.

Q. By your pilot house clock?

A. Yes sir.

(Witness excused).

A. W. ANDERSON, a witness called on behalf of the Claimant and cross-libellant, being duly sworn, testified as follows:

- Q. (Mr. Hughes). What is your business?
A. Master mariner.
Q. How long have you held a master's license?
A. One year.
Q. How long have you held a mate's license?
A. I had a mate's license about three years, I believe.
Q. Three years prior to that?
A. Then I had a mate and pilot's license after that.
Q. What I want to get at is, since you first had a mate's license?
A. About seven years.
Q. About seven years and then after that for about three years you had a mate's and pilot's license?
A. Two years, yes.
Q. And then you got a master's license?
A. Yes.
Q. In what waters?
A. Puget Sound and tributaries and to Cape Flattery.
Q. You were mate on the tug Tillicum on April 8th, 1911?
A. Yes sir.
Q. How long prior?
A. Two years and a half or two years and a quarter.
Q. How long were you on the tug Tillicum altogether?
A. I was on there about nine years before that.
Q. In other capacities?
A. Yes sir.
Q. What are you on now?
A. I am on the La Paloma.
Q. What boat is that?
A. Belongs to the Stimson Mill company.
Q. Is it a tug boat?
A. Kind of a tug, yes.
Q. Will you state, captain, what occurred on the morning of April 8th, 1911?
A. Well, at 4:15 we left the Standard Oil dock.
Q. Having what in tow?
A. The oil scow number 8.
Q. How was she lashed to the Tillicum?
A. On the port side, about thirty feet forward.
Q. That is her bow was about 30 feet forward of the bow of the Tillicum?
A. Yes sir.
Q. What cargo did she have?
A. Two tanks of oil.
Q. How were they loaded on the barge?
A. Well, they were a little bit aft of amidships, so that

the forward end of the scow would be higher than the aft end. They generally tow better that way, one end higher, the end going ahead is always higher.

Q. Was there a railroad track constructed on the barge on which these cars were run?

A. Yes sir.

Q. How were they made fast?

A. With chains lashed to the stanchions.

Q. How many chains and what kind of chain lashings?

A. Galvanized chains, about three quarters to one inch, something like that.

Q. How many chains were there?

A. Four on a side and on each end. Two on each side of each car.

Q. What was the weather?

A. Foggy.

Q. What were you doing?

A. I was at the wheel.

Q. You were at the wheel?

A. Yes sir.

Q. In the pilot house, of course.

A. Yes sir.

Q. Was your window down?

A. Yes sir.

Q. Any obstruction to your vision ahead and on either quarter?

A. No sir. Nothing except the window frames you know.

Q. And how high is the pilot house above the water?

A. Oh, approximately 16 feet.

Q. That is the floor of the pilot house?

A. No.

Q. The windows?

A. The windows.

Q. So that your vision would carry you——

A. About eighteen feet.

Q. About 18 feet above the water.

A. Yes sir.

Q. Did you testify that there was a fog that morning?

A. Yes sir.

Q. What kind of a fog, dense or ordinary?

A. Ordinary fog.

Q. What whistles were given by the Tillicum as you proceeded that morning?

A. Tow whistles, fog whistles.

Q. What whistle is that?

A. One long and two short blasts.

Q. At what intervals?

A. Well, about every minute, approximately; perhaps a little sooner, but it would be every minute.

Q. About what rate of speed would you say you were proceeding until you reached the vicinity of Four Mile Rock?

A. Oh about four and a half to five miles.

Q. What occurred then?

A. After reaching Four Mile Rock?

Q. Yes sir.

A. Well, before we got to Four Mile Rock, we were listening for echos, and after we got the echos why then we slowed down.

Q. About what rate of speed did you reduce to?

A. Oh, about three miles.

Q. What was the object of that?

A. To get our bearings.

Q. Is that necessary in going along past Four Mile Rock and from there to West Point in a fog with a tow, and if so for what purpose?

A. It is not particularly necessary, they don't all do it, but for protection, but they generally do it.

Q. What is the object of it? I want you to explain it.

A. So that in case the tide or something happened to set in one direction or the other, you will not run on the beach.

Q. But with the echos you can tell when the echos begin to disappear about how close you are to West Point, is that it?

A. Yes, you can find out, then when you begin to leave Four Mile Rock you see the echos begin to disappear then and after that they begin to get quite dense and you can haul around for West Point.

Q. You mean faint, don't you?

A. Yes sir.

Q. After the echoes begin to get faint.

A. Yes sir.

Q. So that you can only hear them slightly, then you know you are getting out where you can haul around?

A. Yes sir.

Q. What is the course as you go before Four Mile Rock, before you make the turn?

A. West by north half north.

Q. And at what point, how near West Point light, do you change your course?

A. Oh, approximately, in a fog it would be about a mile and a half or a mile and three quarters from West Point.

Q. Passing along a little further, so that I do not forget

it, were you at this point where you change your course before the collision occurred that morning?

A. No sir.

Q. You had not reached it. Now about how far had you heard the echos from the shore as you were passing Four Mile Rock that morning, had you lost the echos yet from the shore?

A. No sir.

Q. Before this collision occurred?

A. No sir.

Q. Did you hear any fog signal from the vessel ahead of you?

A. No sir.

Q. Or in any direction from you as you passed along there?

A. No sir.

Q. Just prior to the collision, for ten or fifteen minutes?

A. Nothing but the light house.

Q. You heard the light house signal, did you?

A. Yes sir.

Q. You can always recognize that, can you?

A. Yes sir.

Q. Well, what was the first indication that you got that morning that there was any object ahead of you in the water?

A. Well, we got the echo pretty near dead ahead, or approximately dead ahead, a faint echo.

Q. What was that an echo of?

A. That was from our whistle.

Q. Did it sound as though it were faint and some distance off?

A. Yes sir.

Q. What did you do, what was the first thing that the captain did?

A. Slowed down, sir.

Q. That is he gave a bell to the engineer?

A. Yes sir.

Q. To slow down.

A. Yes sir.

Q. Could you tell by the movement of the vessel that the engineer had slowed down?

A. Yes sir.

Q. Now tell what happened after that?

A. Well then, after he slowed down, we blowed the towing whistle again.

Q. Were you both watching ahead to see if you could observe her or see any object?

A. Yes sir.

Q. Did you see or hear anything before you gave your next fog whistle?

A. No sir.

Q. You gave a second fog whistle. Did you get an echo?

A. Yes sir.

Q. Was there any answer to your fog whistle?

A. No sir.

Q. What was the next thing that occurred, captain?

A. The next thing the captain rang the bells to back.

Q. Did you see any glimmer of light ahead at the time that he gave that bell, did you yourself see any glimmer of light when he gave that bell?

A. The captain says, there are some lights. I just commenced to see them about the same time, after he spoke.

Q. And was that the time he gave the bell to go full speed astern?

A. Yes sir.

Q. What was the next thing he did?

A. Gave four blasts of the whistle.

Q. What signal is that at sea?

A. It is a danger signal.

Q. Was that answered?

A. Yes sir.

Q. Were the lights coming closer all the time?

A. Yes sir.

Q. What lights did you take them to be, the range lights of the ship, mast head lights.

A. Masthead lights, yes.

Q. Did the vessel ahead of you make any answer to your danger signal?

A. Yes sir.

Q. What answer?

A. He blew a danger signal.

Q. That is four blasts.

A. Yes sir.

Q. Now were these the first blasts that you heard from the ship ahead of you?

A. Yes sir.

Q. What was the next thing that happened?

A. Then the captain blew three whistles.

Q. The captain of the Tillicum?

A. Yes sir.

Q. What was that signal?

A. Signifying that we were going full speed astern.

Q. And what is the next thing that happened?

A. Well then, just about that same time the collision happened.

Q. The collision followed quickly after the last signal, did it?

A. Yes sir.

Q. How did that collision appear to you, describe it the best you can, captain, was there much shock to it?

A. Not such a great shock.

Q. Not on your boat?

A. No sir.

Q. Can you tell from the examination that you made afterwards how much shock there was to the barge?

A. Well, that is pretty hard to answer. It parted all our lines.

Q. Broke these chains, didn't it?

A. Broke the chains, yes.

Q. What happened to the car?

A. Well, the cars ran ahead then. You see there are blocks on the track, two blocks at the ends on each track, each end of the cars, besides the chains. The head car here was jumped right over or knocked them out, I would not say positive, whether she jumped over or knocked the blocks out of the head end.

Q. You mean the car.

A. Yes, the front wheels.

Q. The car either jumped over or knocked them out.

A. Yes sir. And they ran out over the end of the scow, the first car, and the head truck dropped off and went in the bay.

Q. That you discovered after you had time to examine it, of course.

A. Yes sir.

Q. Now how was your boat swinging at the time and just prior to the collision, was she going straight ahead or was she swinging?

A. Swinging.

Q. Was she going ahead or astern?

A. Going astern.

Q. Which way was she swinging?

A. Well, her bow was swinging to starboard.

Q. What effect did the collision have on her swinging to starboard?

A. It helped swing her so much faster.

Q. How long did the two vessels seem to be together, how long did the bow of the *Rosalie* appear to be in contact with the barge?

A. Just a few seconds.

Q. Did the bow of the *Rosalie* appear to pass in front of you as you swung around?

A. Well, she did not exactly appear to go ahead of us to speak of. She just simply kind of hit us, and we kept on swinging and she just about stopped just about that same time.

Q. Did she back off then?

A. Yes sir.

Q. Now which side of her were you on after the collision when she backed away?

A. On the starboard side.

Q. Your port side was on her starboard side?

A. Yes sir.

Q. And did you observe the lights, West Point light, could you tell from the West Point light which way you were headed after the collision occurred and swung around?

A. Well, I heard the West Point light fog signal; it sounded off on our port side.

Q. So that you would be heading which way?

A. Toward the beach.

Q. You stopped finally, did you?

A. Yes sir.

Q. Did the captain give the signal to stop after the vessels were entirely clear?

A. Yes sir.

Q. And at that time you swung around so that you would be heading toward the beach and the *Rosalie* was on your port side?

A. Yes sir.

Q. You were on the starboard side of the *Rosalie*, were you?

A. Yes sir.

Q. That is after the collision.

A. Yes sir.

Q. And after the two vessels had parted and backed off from each other.

A. Yes sir.

Q. I think you testified that your vessel was making stern-way at the time the collision occurred, have you?

A. Yes sir.

Q. How could you tell that?

A. By the wake of the water going ahead of the bow.

Q. Did you notice it prior to the collision?

A. No sir.

Q. When did you first notice the water was churning ahead of you, the wake of the water?

A. Just before the Rosalie hit us.

Q. The first you observed that.

A. Yes sir. It was after I saw her lights, then of course when she got up right close I happened to look down toward the scow—she was going to hit us, you could tell by that time where she was going to hit, and I looked over the scow there on that side.

Q. You could see the water there?

A. Yes sir.

Q. And that was the first time that you had observed that the water was churning ahead of you?

A. Yes sir.

Q. Could you tell from the action of the boat, in your experience on the boat, whether she was going astern prior to the time or not. Or did not you give it attention?

A. I did not give it much attention, although I know she was backing.

Q. You knew that she was backing?

A. Yes sir. I could feel it on the wheel that the water was working on that side, taking it on the rudder, you can tell it. But I never gave it a thought as far as that goes, when she got so close as that I took observations to see where she was going to hit first.

Q. One way you have of knowing that she was going astern was when you looked down to see whether she was going to strike you and where, and you noticed as she approached and just before she struck you that the water was running away from you in front?

A. Yes sir.

Q. The white foam of the water.

A. Yes sir.

Cross Examination:

Q. (Mr. Robinson). Mr. Anderson, I did not quite understand the way these vessels brought up after the collision. You say that she was on your port after the collision?

A. Yes sir.

Q. That is the barge would be between you and the Rosalie then?

A. Well, kind-of, in a way, but the barge, you see the headlines broke when she hit the barge she kind of swung out and around at the same time.

Q. (Mr. Hughes). The barge, did you mean?

A. Yes. You see the barge, the two spring lines and the head line were broke and that let the scow swing away from the bow of the Tillicum, about that position, like that (show-

ing). You see this was the barge up here, and as soon as they broke we kind of swung further in that direction, out like that.

Q. You mean the bow of the barge swung away from the bow of the Tillicum?

A. Yes sir.

Q. (Mr. Robinson). Well then the Tillicum and the barge, speaking generally, appeared to be on the starboard side of the Rosalie a little, after the collision, didn't they?

A. Yes.

Q. And you got that echo out in front as you testified. What did you think it came from?

A. Expected some vessel or some object ahead of us.

Q. You knew there had to be something on the water, a vessel or something else, didn't you?

A. Yes sir.

Q. Could not have been anything else give you that echo?

A. No sir.

Q. You had been listening for these echos right along until just before the collision, hadn't you?

A. Yes sir.

Q. On the Bluff.

A. Yes sir.

Q. Seeing whether they were going to disappear or not.

A. Yes sir.

Redirect Examination:

Q. (Mr. Hughes). I do not think I asked you, captain, did you examine afterwards the bow of the barge to see how she was injured, and where, where the bow of the Rosalie struck her?

A. Yes sir, I did.

Q. Tell about that.

A. Well, I noticed that there was quite a hole cut there, the planks were badly smashed up at that particular spot.

Q. What part of the bow of the barge was struck?

A. Starboard corner, sir.

Q. About how near the extreme corner?

A. Two feet and a half.

Q. Then in addition to breaking the chains that held the cars, caused the cars to forge forward and hang over the bow of the barge, the collision also broke the lines with which the barge was also fast to the Tillicum forward?

A. Yes sir.

Q. So that only the aft lines held the barge to the Tillicum?

A. Yes sir.

Q. Of course you had to go aboard the barge to make her fast again, before you went on around to Ballard?

A. Yes sir.

Q. And you made the cars fast also so that they would not fall off?

A. Yes sir.

Q. And you never recovered the forward trucks of the cars, did you?

A. No sir.

Q. I forgot to ask the captain, but you may be able to answer, who was your chief engineer at that time?

A. Mr. LaBonte.

Q. Do you know whether he was on duty?

A. No, he was not.

Q. He was not.

A. No sir.

Q. Do you know what has become of him?

A. No sir.

Q. He is out of the country, however?

A. I could not say. I have not seen him for sometime.

Q. (Mr. Robinson). Mr. Anderson, how much higher would these cars be at the front, would they stand from the water at the head car than the rear. You said they would stand on an incline on account of the barge being higher in front?

A. Yes.

Q. How much higher would it be?

A. About three feet, sir.

Q. About three feet?

A. Yes.

Q. About how high would you think the front of the front car would be from the water?

A. About fourteen feet.

Q. How much of that would be the barge itself?

A. About five feet.

Q. As I understand these were the ordinary tank cars that we see going along the railroads?

A. Yes.

Q. Oil cars.

A. Yes sir.

Q. You have been on the tug *Tillicum* when she was towing a scow laden as this one was, I presume?

A. Yes sir.

Q. When the tug would be put full speed astern she would swing, would she not?

A. Yes sir.

Q. And would swing to starboard, would she?

A. Yes sir.

Q. Would she swing very fast under these conditions or would it be slow, or would she come around pretty lively, loaded as you were that night?

A. Not so very, no sir.

Q. Would it change the direction quite a good deal before you got sternway, actual sternway on the whole business, do you understand what I mean?

A. Yes. Well, approximately three points.

Q. Approximately three points.

A. Yes sir.

Q. You say you saw white water about your bow?

A. Yes sir.

Q. Did you see it all the way back? Or did you see it at bow of the barge do you mean?

A. Well, on the starboard side of the barge right ahead of the boat.

Q. Right ahead of the boat.

A. Yes sir.

Q. This barge has got a square end, has it not?

A. Yes sir.

Q. Square barge, rectangular?

A. Yes sir.

Q. (Mr. Hughes). Did you look down at the water at the side of the Tillicum?

A. No sir. I remember just ahead of her bow and along-side that scow on the starboard side of the scow.

Q. How did the water appear?

A. Well, it appeared to be broken up, you know, bubbling up from the scow.

Q. Would that appearance have been caused by the water from the Rosalie?

A. No sir.

Q. Why not, state your reasons?

A. Because it would come toward us from the Rosalie instead of leaving us.

Q. (Mr. Robinson). That water would be forty feet ahead of you, about forty feet to the bow of the scow, would it not, from where you were standing?

A. Yes sir.

Q. All of that.

A. Approximately.

Q. And do you mean to say you could tell which direction water was going forty feet ahead of you in this fog?

A. Yes sir.

(Witness excused).

W. A. ROUSE, a witness called on behalf of the Claimant and cross-libellant, being duly sworn, testified as follows:

Q. (Mr. Hughes). What is your business?

A. Marine engineer.

Q. How long have you been a marine engineer?

A. About fourteen years.

Q. Were you an engineer on the tug *Tillicum* on April 8th?

A. Yes sir.

Q. Were you on duty on the morning of the 8th of April, 1911, at the time the collision occurred that has been referred to in the testimony of the other witnesses?

A. Yes sir.

Q. Who was chief engineer?

A. A man by the name of LaBonte.

Q. Do you know where he is?

A. No sir, I do not.

Q. He is not here?

A. Not that I know of.

Q. Where was he at that time?

A. He was in his room.

Q. He would be in his bunk at that hour?

A. Yes sir.

Q. And you were the engineer on duty?

A. Yes sir.

Q. From the time you left the Standard Oil dock until the collision occurred?

A. Yes sir.

Q. After you got under way, what speed was maintained until you approached Four Mile Rock?

A. I do not know what speed the boat makes; I am not supposed to know that. We were not running her full speed—that would be the pass-over and wide open. But if she was making five miles an hour we could run her up to six, there would be that much difference between that and full speed.

Q. It would be four-fifths to five-sixths.

A. It would be about twenty turns difference.

Q. Now could you tell with that barge alongside about what speed you were making there?

A. No, I could not tell that. I have no way of knowing it. I do not keep a record of that on the boat. I know what we would make light, about nine or ten miles.

Q. But with a barge?

A. I would not know.

Q. Now did you have signals as you approached Four Mile Rock, to slow down?

A. I got a slow bell, yes sir.

Q. Well, you were engineer on her for some time?

A. I have been on her about 10 or 11 months.

Q. At that time.

A. Yes sir.

Q. Going out in a fog, is it customary as they get in the vicinity of Four Mile Rock to slow down for the purpose of getting echos?

A. Yes, we often slow down in a fog or whistles around the bay, but this morning we did not, we went right on out of the bay, but somewhere there they gave a slow bell.

Q. Now how long was it after that, how long had you been running under the slow bell before you got another signal?

A. Oh, I guess about five minutes, something like that, five or ten minutes.

Q. Running under a slow bell, you would drop down to about half speed?

A. Yes, just about half speed.

Q. What occurred after that?

A. Well, about a minute after that——

Q. I mean after you had been running under a slow bell you say for five minutes or thereabouts? What was the next thing that happened?

A. I got a stop bell.

Q. A stop bell.

A. Yes sir.

Q. What did you do?

A. I stopped the engine.

Q. What happened after that?

A. About a minutes after that I got two bells, to back up and a jingle.

Q. What would that mean then?

A. Wide open astern.

Q. That is your two bells and a jingle would be to reverse full speed astern?

A. Yes sir, two bells reverse and a jingle full speed.

Q. Then did you get any signal to open her wide from there?

A. A little jingle.

Q. A little jingle following that?

A. Yes sir.

Q. What did you do?

A. I gave her the pass-over, all she could stand.

Q. Astern?

A. Yes sir; all the engines would stand.

Q. What was the next thing that happened then to your knowledge?

A. The collision, there was a jar.

Q. About how long had you been running full speed astern before you felt the jar of the collision; what is your best judgment and recollection?

A. Oh, it was not very long, about fifteen or twenty seconds, I suppose, or half a minute, something like that.

Q. How long would it take you to get sternway running as you were at about half speed—you had been stopped for how long?

A. About a minute.

Q. And in that time how near would you overcome headway?

A. Well, she would not be making over a mile an hour, not that, I don't suppose; must have been pretty well stopped at that time.

Q. After you gave her full speed astern, had you been running long enough to give her sternway?

A. I should think so; she turned up three or four hundred revolutions before the collision, I think that would give her sternway, headway astern.

Q. It would?

A. Yes sir.

Q. Did you hear any fog signals or any other signals ahead of you?

A. I could hear them blowing fog signals coming out of the bay.

Q. You are speaking of your own boat?

A. Yes sir.

Q. After you heard the four whistles did you hear four whistles from the boat ahead of you?

A. There were several whistles following right along, I could not say.

Q. You could not undertake to distinguish them?

A. No, I could not.

Q. But down in the engine room you would not be able to distinguish or state that any whistles were ahead of you?

A. No, I could not state. I could hear our own whistles. That is right up above. This engine is a little bit on the main deck anyway and you can stand in the engine room and reverse the engine and look right out.

Q. Was your vessel giving regular fog signals that morning from the time you left the dock?

A. They were blowing regular signals, yes sir.

Q. That was one long and two short blasts of the whistles?

A. Yes sir.

Cross Examination:

Q. (Mr. Robinson). What time did you leave the Standard Oil dock, do you know?

A. About four o'clock, a little after four.

Q. Now then you ran at the same speed that you run at any time, didn't you, that is you did not use this cut-off in towing that you speak of?

A. Yes sir.

Q. That is you ran her as under any conditions?

A. No not as we run under any conditions.

Q. I mean as ordinarily towing.

A. Yes sir.

Q. And the first signal you got was a signal to slow?

A. Yes sir.

Q. About how long after you left the dock?

A. About an hour.

Q. Then did not you get any other slow bell after that?

A. I got a stop bell.

Q. There was only one slow and then the next bell was a stop?

A. Yes sir.

Q. The next signal came about how long after?

A. After I got the stop bell?

Q. Yes sir.

A. About a minute, I guess.

Q. You had charge of the engines?

A. Yes sir.

Q. Who else was down there with you?

A. The fireman.

Q. Yourself and this man were the only men on duty in your department?

A. Yes sir.

Q. How long did you say you thought you had been backing that boat before you felt the shock?

A. About 15 or 20 seconds, something like that. I don't know just how long; it was not very long.

Q. That is your best judgment, that it was something like that?

A. Yes sir.

Redirect Examination:

Q. (Mr. Hughes). The engine room and then the fire room was down below?

A. Yes the fire room was down below.

(Witness excused).

CAPT. E. N. CHARLESWORTH, recalled, testified as follows:

Q. (Mr. Hughes). Do you know where the engineer is?

A. No sir. He is back east somewheres. I heard he was in Michigan.

Q. He was not where he would have knowledge of what occurred?

A. He came out in his underwear after the collision.

Q. There is one matter I overlooked which I want to call to your attention. About how long after the collision was it before you got under way again?

A. I judge about five minutes when we got the barge turned around and got under way. I had to turn the barge around, and I think it took about five minutes, may be more.

Q. You had to lash the barge fast again?

A. Yes sir.

Q. Did you run out of the bank of fog?

A. Yes sir.

Q. When you got out of the fog bank about how far were you from West Point light?

A. Between a mile and a mile and a half, or a mile and a quarter.

Q. Was it clear so that you could see West Point all right?

A. Yes sir, everything was clear.

Q. Dense fog behind you still when you ran out of it?

A. Yes sir.

Q. The bank of fog was back of you after you were on your way to West Point light?

A. Yes sir.

Q. After starting ahead then you only ran a very short distance until you ran out of the fog?

A. Yes sir.

Q. That frequently occurs in the waters of Puget Sound, does it?

A. Yes sir.

Cross Examination:

Q. (Mr. Robinson). Ten minutes before you ran out of the fog bank or fifteen minutes, it might also have been possible that it was foggy up further. Do you get what I mean. It might have been foggy up towards West Point light fifteen minutes before, might it not, to some extent?

A. That is hard to say.

Q. You could not say it was not?

A. I could not say what the weather was down there at the light house at that time.

Q. You say it is possible for a fog to lay in a streak like that. It is also possible that the strip might have extended further down ten minutes before?

A. That is hard to say.

Q. It is not impossible?

A. It is possible that it may have.

Q. (Mr. Hughes). It would be very unusual, would it not?

A. Yes, very unusual.

Q. Do you know what time you passed West Point?

A. No sir.

(Witness excused).

CAPT. A. W. ANDERSON, recalled, testified as follows:

Q. (Mr. Hughes). How long after the collision before you got the barge lashed fast and under way again?

A. About five or six minutes, sir.

Q. You proceeded then towards West Point, did you?

A. Yes sir.

Q. Did you run out of the bank of fog?

A. Yes sir.

Q. Did you run out of it suddenly?

A. Yes sir.

Q. How far were you from West Point light when you got out of the bank of fog?

A. About a mile, sir.

Q. Entirely clear?

A. Yes sir.

Q. Was it clear all the way from the bank of fog to West Point light after you got out of the fog?

A. Yes sir.

Q. You could see the bank of fog behind you still?

A. Yes sir.

Q. Between there and south all along the shore?

A. It was foggy.

Q. That is not an unusual occurrence in the waters of Puget Sound?

A. No sir.

Cross Examination:

Q. (Mr. Robinson). You say it was clear for a mile this side of West Point light?

A. Yes sir.

Q. Then when you got up there, I suppose the fog whistle was not blowing at West Point, was it?

A. Now I could not swear to that.

Q. But you did swear on your examination in chief that you heard it blowing at the time the accident happened?

A. Yes sir.

Redirect Examination:

Q. (Mr. Hughes). They would blow the fog whistle if there was a bank of fog along Magnolia bluff?

A. Yes sir.

Q. Whether there was any fog at West Point light or not?

A. Yes sir.

Q. So as to warn vessels through that bank of fog?

A. Yes sir.

Q. Do you know what time you passed West Point light?

A. No sir.

(Witness excused).

W. A. ROUSE, recalled, testified as follows:

Q. (Mr. Hughes). I think you testified that your room was so situated that you could look out over the water?

A. Yes sir, I could look out on the starboard side; the scow was on the other side.

Q. Could you see all along that there was a dense fog that morning prior to the collision?

A. Yes sir.

Q. Now about how long was it after the collision before you got under way?

A. Five or ten minutes, something like that.

Q. After you had started on your course toward West Point, about how long was it before you got out of the fog bank?

A. About five minutes.

Q. Could you see a clear line of demarcation?

A. I could see the light, the whole point. I have seen it many times out there that way. The fog starts and settles in the bay and then goes right out and comes out by West Point. And you can see clear across the Sound as a rule.

Q. When it will be clear at West Point?

A. Yes sir.

Q. Did you ever work at West Point?

A. No, I never worked there but I lived there for ten years.

Q. What is the practice at the light house as to blowing the fog signal when there is no fog at West Point?

A. Well, whenever it gets down close to the point, when they cannot see across, that used to be the rule.

Q. That is to warn any vessels that might be passing through that fog?

A. Yes sir.

Cross Examination:

Q. (Mr. Robinson). When you cannot see across where?

A. Bainbridge island, about four miles across; but they often start the horn before that, if the fog is settling down toward the point, they might start the fog horn before that.

Q. You say you ran five or ten minutes before you came into the clear?

A. About five minutes, I think.

Q. Do you know what time you passed West Point that morning?

A. I guess about—I don't know exactly, about half past five, something like that.

(Witness excused).

Hearing adjourned.

SEATTLE, WASHINGTON, Jan. 13, 1914.

Present: Mr. Robinson, for the libelant. Mr. Hughes, for the Claimant.

CAPT. E. W. CHARLESWORTH, recalled on behalf of the Claimant, testified as follows:

Q. (Mr. Hughes). Captain Charlesworth, you were master of the tug Tillicum at the time of the collision with the Rosalie in April, 1911?

A. Yes sir.

Q. You have testified before as to the cause of the collision?

A. Yes sir.

Q. After the collision what did you do with the tug and barge?

A. Proceeded to Ballard.

Q. For what purpose?

A. To get some blocking.

Q. Then what did you do?

A. Had orders to go to Moran's ship yard.

Q. For what purpose?

A. To get the tanks hoisted out of the bay.

Q. That is out of the bow of the barge, they were hanging over in the water?

A. Yes sir.

Q. Was that done at Moran's?

A. Yes sir.

Q. While you waited there.

A. Yes sir.

Q. While you were there was the Rosalie also at Moran's?

A. Yes sir, on the north side of the dock.

Q. Did you see the Rosalie?

A. Yes sir.

Q. Did you see what damage was done to her?

A. No sir, I never examined it.

Q. You did not go aboard, do you mean?

A. No sir, I did not.

Q. Could you see it from the wharf there?

A. Yes, I could see that his nose, his stem, was smashed in a little.

Q. Above the water?

A. Yes sir.

Q. Not any indication of injury down below the water line?

A. No sir.

Q. It was all above the water line?

A. Yes sir.

Q. Now how much time was lost with your tug? and the barge?

A. Twenty-four hours.

Q. Caused by this collision?

A. Yes sir.

Q. What was the value of the use of the Tillicum for twenty-four hours?

A. Sixty dollars.

Q. The company owned the barge and the oil tanks?

A. Yes sir.

Q. What is the value of the use of the barge and the oil tanks?

A. Fifteen dollars a day.

Q. About how long after the collision was it before the scow or barge was repaired?

A. After the tanks were raised out of the water the barge was repaired?

Q. How long was it after this collision before the barge was repaired?

A. I don't know how long afterwards.

Q. Was it along about the 4th of July?

A. Yes, somewhere around there.

Q. Do you know what was the reason, why that was not repaired sooner?

A. No sir.

Q. Who did the repairing?

A. Mr. McKay.

Q. Ship carpenter at Ballard?

A. Yes sir.

Q. You used the barge in the meantime?

A. Yes, in a leaky condition.

Q. The breakage was chiefly above the water line?

A. Yes sir.

Q. Did any other injury or damage occur to it before she was repaired by Mr. McKay, or was it in the same condition when it was taken to him for repair as immediately after the collision with the Rosalie?

A. No sir.

Q. My question is a double question and your answer does not cover it. I want to know whether it was in the same condition at the time you took her out to be repaired as it was immediately after the collision with the Rosalie?

A. I don't quite understand.

Q. Did anything happen to this barge between the collision with the Rosalie and the time you took her to be repaired?

A. No sir.

Q. It was in the same condition when you took her up there to be repaired that she was right after the collision.

A. Yes sir.

Q. What breakage of chains occurred, the lashings fastening the oil car on the barge and fastening the barge to the Tillicum, that was caused by this collision?

A. It broke the chains, the fore-lashings on each side eight chains, all the hooks carried away.

Q. Were these repaired by the Stimson Mill company?

A. Yes sir.

Q. Do you know what would be the reasonable value of these repairs?

A. I have no idea.

Q. I think you testified before that the forward trucks under the forward oil car dropped off into the water?

A. Yes sir.

Q. Did you ever get them?

A. No, they are out off Four Mile Rock.

Q. Before you could go on and use it, and before you could get any new trucks made and install them, what was done so that you could use the car, pending the building of new trucks to put on her?

A. I took it up the river and they transferred—took the ties out from under and put other trucks in.

Q. At the terminus of the Marysville and Northern Railway?

A. Yes sir.

Q. The company installed temporary trucks up there?

A. Yes sir.

Cross Examination:

Q. (Mr. Robinson). You say you lost twenty-four hours?

A. Yes sir.

Q. Why was that?

A. On account of the tide. We only have one tide to go into the river, to go over the sand bar, the flats.

Q. I take it that you had to come down here to Moran's to get the tank raised and then wait for the next tide?

A. Yes sir.

Q. And go out the next morning.

A. Yes. You see when we go in the river there is only one tide you can go over the sand bar, and if you do not get there at a certain time you cannot get into the river.

(Testimony of witness closed).

E. T. CONNELL, a witness called on behalf of the Claimant, being duly sworn, testified as follows:

Q. (Mr. Hughes). What is your business?

A. Agent of the Seattle Car and Foundry company.

Q. You are familiar with the trucks used on the oil tank cars?

A. Yes sir.

Q. Do you know the value of a set of new trucks, forward trucks, of one of these cars?

A. One set of trucks would be \$466; \$233 for one truck, two trucks being required for a car.

Q. Only the forward trucks.

A. They are both the same, as a rule, \$233.

(No cross examination).

(Testimony of witness closed).

HANS NEDERLIE, a witness called on behalf of the Claimant, being duly sworn, testified as follows:

Q. (Mr. Hughes). What is your business?

A. Carpenter.

Q. Are you a carpenter or repairer on the Marysville & Northern Railroad?

A. Yes sir.

Q. Do you remember the time when the Tillicum brought the scow with the oil tanks on it, after the collision with the Rosalie, when the forward truck was knocked off?

A. Yes sir.

Q. Was that brought up to you to be repaired?

A. Yes sir.

Q. Did you build a new set of trucks?

A. A new truck.

Q. A forward truck. Now, what was the first thing that you did in order to continue the use of the car and the barge?

A. We went down to the railroad, the logging road, and took up the car and put a temporary logging truck under it.

Q. The logging trucks were put under temporarily while you built a new truck?

A. Yes sir.

Q. What was the value or cost of doing that work, installing the temporary truck?

A. I should judge about thirty dollars.

Q. Then you built a new truck, did you?

A. Yes.

Q. And the temporary trucks were a set of logging trucks from the logging cars of the Marysville and Northern Road?

A. Yes sir.

Q. Owned by the Stimson Mill company.

A. Yes sir.

Q. About how long did you have to use these temporary trucks under this oil car before you were able to build and install a new truck?

A. The best I can remember about two months.

Q. Then, at the end of that time you had built the new trucks and installed them, did you?

A. Yes sir.

Q. Did you also repair the car for any damages done to the car?

A. Yes, there was some damage to the body of the car and we repaired it.

Q. What was the value of the cost of repairing and installing the new truck and repairing the car?

A. The best I can remember it was about thirty dollars.

Q. And the cost of building the new trucks the same as this gentleman testified to?

A. Yes sir.

Q. \$233 for building the new trucks.

A. The company built the new truck?

Q. And they would be worth \$233 as this gentleman testified?

A. I am not positive on the value of them.

Cross Examination:

Q. (Mr. Robinson). Mr. Nederlie, did I understand you to say that it cost thirty dollars to put in the temporary

truck and then thirty dollars again to put in another permanent one and in repairing the car?

A. I did say it cost about thirty dollars to lift up the oil tanks and put temporary trucks in.

Q. And then it cost thirty dollars another time to put the permanent truck in and repair the car?

A. That thirty was included in the repair of the body of the car. We could not do the repairing to it at the time we put the temporary truck under it; they were using the car right along, and in order not to lose the use of it, we had to let it go in the condition it was until we had a chance to put the new truck in.

Q. This second thirty dollars was when you repaired the car and finished the car up with permanent trucks. You mean to say there were two sums of thirty dollars?

A. Yes sir.

(Testimony of witness closed).

MR. MCKAY, a witness called on behalf of the Claimant, being duly sworn, testified as follows:

Q. (Mr. Hughes). Did you repair this barge that was injured at the time of this collision?

A. Yes sir.

Q. That was about the 4th of July, was it, following the collision?

A. About the latter part of August.

Q. Was it in August?

A. Yes sir.

Q. What were the injuries that you repaired?

A. The head was stove in; part of the head log, and the planking below it; one or two stanchions broke. Had to take out the planking underneath the headlog. The rug piece that goes around the end. The guard that goes fore and aft about 26 feet. Replaced that with a new piece of headlog, new plank underneath, and this new fan piece or rug piece. New stanchions, and corked one side of her all over and the end; and also for our time in hauling and launching her.

Q. You had two helpers?

A. Not all the time.

Q. Part of the time?

A. Yes sir.

Q. Who paid you for this work?

A. The Stimson Mill company.

Q. I will ask you to examine these three bills, and state whether or not they are the receipts for the work done in the repairing of this scow at the time you have mentioned.

A. Seven days \$31.50. Six days \$27. Fourteen days \$63. Yes sir.

Q. And these three bills, one for your work \$63; one for another man \$31.50 and one for another man \$27, were for the labor of repairing this scow?

A. There is part of that hauling and launching and fixing the cradle, time I put in extra.

Q. That was all necessary to do?

A. It was all necessary, and I could not do it any other way.

Q. That was paid by the Stimson Mill company?

A. Yes sir.

Q. Now who furnished the lumber you used?

A. The Stimson Mill company.

Q. Describe what lumber was furnished by the Mill company.

A. Two pieces 13x13 fifteen feet long, surfaced both sides. There was one 4x12 26 feet, surfaced one side and two edges. One piece 4x18 about 15 feet long. There was a piece, I cannot remember exactly what that piece of headlog was, but it seems to me it was about 16x14 about ten feet long. There was a piece went inside in the corner to reinforce, that was about 6x14.

Q. How long?

A. About ten feet long. There was also a faced piece went on there 4x16 twenty-six feet long. There was one bale of oakum used on her.

Q. Was that furnished by the Stimson Mill company?

A. Yes.

Q. What was that worth?

A. \$4.50. There was three sacks of cement.

Q. How much was that worth?

A. I think that was worth seventy-five cents a sack. I am not sure.

Q. Three sacks would be two dollars and a quarter.

A. Yes. There was some bolts went in there. I don't know what the price might be.

Q. Now the oakum and cement and the bolts were furnished by the Stimson Mill company?

A. Everything furnished by the Stimson Mill company. (No cross examination).

(Testimony of witness closed).

MR. H. JACOBAY, a witness called on behalf of the claimant, being duly sworn, testified as follows:

Q. (Mr. Hughes). What is your business?

A. I am purchasing agent for the Stimson Mill company and the Marysville and Northern Railroad company.

Q. You are acquainted with the value of lumber?

A. Yes sir.

Q. You have heard Mr. McKay describe the lumber used in repairing the scow. What was the value of that lumber?

A. It was worth about twenty-eight dollars the lumber.

Q. And the oakum and cement were of the value stated by him?

A. Yes. I think the cement was about two dollars, and the oakum was as he stated. And then there was a dollar and a half for spikes. And there were screw bolts that were worth about eighty cents.

Q. Where was the gear of the scow that was injured in this collision repaired, the chains?

A. We fixed them at the mill.

Q. Do you know what that cost?

A. About fifteen dollars to repair the chains and put new hooks in them, in the chains.

Q. The scow was taken over, as testified by captain Charlesworth, to the Moran company to have the car lifted back out of the water?

A. Yes sir.

Q. Did they render a bill for that service, the Moran company?

A. Yes sir.

Q. And the Stimson Mill company paid it?

A. Yes sir.

Q. I show you this bill and ask you if that is it, a bill for fifty dollars?

A. Yes sir, that is correct.

Q. That was paid by the Stimson Mill company.

A. Yes sir.

MR. HUGHES: If you wish we will call the Moran people and prove this bill.

MR. ROBINSON: No, we will admit it.

MR. HUGHES: I offer this bill, and those identified by Mr. McKay, in evidence.

Papers marked Claimant's exhibits 2, 3, 4, and five, filed and returned herewith.

Q. What was the value of the use of the scow and the oil car per day?

A. About fifteen dollars.

Q. The scow and the cars were owned by the Stimson Mill company?

A. Yes sir.

Q. And the value of the use of the tug Tillicum per day is how much?

A. Sixty dollars.

Cross Examination:

Q. (Mr. Robinson). You are the purchasing agent?

A. Yes, that is my official capacity, but I am now acting as manager.

Q. Do you know where they got this truck they put in the car?

A. Why, it was built up there at camp, at our works up there.

Q. Where did you get the wheels?

A. They were made by the Griffin Wheel company at Tacoma. We buy our wheels from there; and the rest of the stuff was built up there.

(Testimony of witness closed).

FRED MCFARLAND, a witness called on behalf of the Claimant, being duly sworn, testified as follows:

Q. (Mr. Hughes). It has been testified here that temporary trucks were installed under the oil car while new trucks were being built.

A. Yes.

Q. And that they were used about sixty days. These were the trucks of the Stimson Mill company?

A. Yes sir.

Q. What is the value of the use of these trucks?

A. A dollar a day.

Q. That would be about sixty dollars?

A. Well, it was two months; it would be fifty dollars, about; 25 or 26 days to the month.

Cross Examination:

Q. (Mr. Robinson). You kept extra trucks up there?

A. No, we haven't any extra, only what we use to log with. We never have had enough for it; we are short all the time.

Q. Where did you get these trucks you speak of?

A. That was one of our trucks that we used there.

Q. In logging operations you mean?

A. Yes.

Q. Did you take them out from under a logging car?

A. Yes, it was one we used for logging; used the trucks for logging.

Q. You use them separately?

A. Yes sir.

Q. Just the truck?

A. Yes, if we take one out it spoils the car. The car is worth a dollar a day. We often rent cars and that is what they pay us for rent.

(Testimony of witness closed).

Hearing adjourned.

SEATTLE, WN., Feb. 11, 1914.

Present: Mr. Robinson, for libelant. Mr. Hughes, for Claimant.

MATTHEW H. SANDSTROM, a witness called on behalf of the Claimant, being duly sworn, testified as follows:

Q. (Mr. Hughes). What is your business?

A. Ship carpenter.

Q. How long have you been engaged in that business?

A. Twenty-eight or twenty-nine years.

Q. Did you ever own or operate a ship yard?

A. I have, yes.

Q. In or about the city of Seattle?

A. Yes, at Ballard, at the time.

Q. When was that?

A. 1902 and 1903.

Q. Did you during that time have occasion to do any repair work on the steamship Rosalie?

A. I did.

Q. What was it?

A. I had her on the dock there for a general overhauling and I also put a piece of stem in her.

Q. Had she had a collision in which her stem was injured?

A. She had run into some driftwood or something that broke up the stem and I put in a piece of stem, false stem.

Q. At that time you put in a false stem?

A. Yes.

Q. What are the dimensions of the Rosalie?

A. The Rosalie is 160 feet long, she is ten feet deep and she is about 24 or 25 feet beam.

Q. When you say deep, that is the depth of the hold?

A. Yes.

Q. That would ordinarily, speaking in common parlance, be the depth below the water line.

A. She draws about 8 feet of water forward and about nine and a half or ten feet aft.

Q. I show you this model and ask you if you made that?

A. I did, yes.

Q. That is the model showing forward part of a steamship of the character of the *Rosalie*?

A. Yes sir.

MR. HUGHES: For the purpose of illustration I offer this model in evidence.

Model marked Claimant's exhibit "6", filed and returned herewith.

Q. I wish you would explain, so that the Court in examining the model will be able to understand what you mean by the stem of the ship?

A. Well, the stem of the ship runs from here right up to the top part of the ship.

Q. That is to say commencing at the fore-foot?

A. Commencing at the fore-foot.

Q. And running up the extreme front or bow of the ship to the top.

A. Yes sir.

Q. How, in such a vessel, and of what is the stem constructed?

A. Why, originally the stem and another piece called the apron was bolted together, and there is a rabbit cut off the plank, as you notice in there. The rabbit is cut in to retain the stem, the stem goes inside of that rabbit about two and a half or three inches, and it is fastened to this heavy piece inside there called the apron.

Q. Now the apron, then, is immediately back of the stem, is it?

A. Yes sir.

Q. Just explain the shape of that so that the Court will understand.

A. It is simply a square piece of timber put in there, in a ship of her size it would be about 14x14.

Q. And how long a timber would that be?

A. It would take on a ship of the *Rosalie*'s dimensions, it would take about 12 feet.

Q. That is, the apron would be a timber 14x14 and about 12 feet high?

A. Twelve feet high, sir.

Q. Extending from the fore-foot, which is down here at the point of the bow of the ship, up to the top?

A. Well, it does not altogether run down to the fore-foot. It runs down and counters on what is called deadwood. Runs down and connects on top of the fore-foot, so that it does not require a piece as long as the stem would be.

Q. What is the deadwood?

A. The deadwood is a piece that is put in there angle-

wise which runs—perhaps you know it is customary to put a heavy knee in there first and then the apron run on this knee to form the deadwood, if there was a knee; a piece in there angle-wise and built up of solid wood in order to fasten the frames or cants on that.

Q. Then the stem is fastened on immediately in front of this forefoot and apron?

A. Yes sir.

Q. Now, when you say you put in a false stem, what do you mean by that?

A. She was in collision or hit something and bruised up the stem just at the water line, so that I went to work and cut it down here, scarf like, about two feet.

Q. Commencing at the knee or fore-foot?

A. Not quite to the fore-foot. I left a piece in there, and trimmed it in up to the hood-ends, the end of the plank and run it above the guard, and just barked it out on there for the hood ends.

Q. Above the guard rail on the ship?

A. Above the guard rail on the ship.

Q. For the purpose of putting on a stem when it is broken would it be necessary to remove any of the planking of the side of the ship?

A. No sir, not to put on a false stem.

Q. If any part of the apron were injured or had become decayed, so that it had to be renewed, would it be necessary to take off the planking on one side in order to put in a new apron?

A. In a case of that kind it would be necessary to remove the plank at least on one side.

Q. What is the usual timber that is put in for the apron of these ships?

A. Fir.

Q. Fir timber. What is the ordinary life?

A. Oh, anywheres from 12 to 20 years.

Q. How old is the *Rosalie*?

A. The *Rosalie* was built in 1893, if I remember right.

Q. At the time you put in a false stem you did nothing to the apron?

A. I did nothing to the apron; I did not examine the apron. But it was, as far as I remember it was then in fairly good condition.

Q. Now it appears from the testimony in this case that the *Rosalie* came into collision with a barge being towed alongside the *Tillicum*, on the 8th of April, 1911, the morning of the 8th of April, 1911, during a fog. That the collision

was bow on and some injury was done to the stem or forepart of the Rosalie. At which time she was docked and a survey made by James Fowler, surveyor to Lloyd's and Frank Walker, surveyor to the owners. On demand made of the libellant, they have produced a copy of that report of the survey, which I now offer in evidence:

Paper marked Claimant's exhibit "7", filed and returned herewith.

And I show you this survey report. Have you previously had this submitted to you by me for the purpose of examination and estimate of what would be the reasonable cost of making the repairs on this vessel called for by that survey?

A. I have, yes sir.

Q. Have you made estimates of what it would cost to make all the repairs called for by that survey, in the light of your knowledge and experience as a shipbuilder?

A. I have, yes sir.

Q. You are familiar with the cost of labor and material for doing work of that kind?

A. I am.

Q. At this time in the city of Seattle?

A. Yes sir.

Q. Let me ask you first: You say that you had a dock of your own up to 1903. Since that time what have you been doing?

A. I have been working for different people. I was with Hall Brothers about two years and a half, foreman, and when I left them I went down to Grey's Harbor and was carrying on a business of my own down there.

Q. Ship building business?

A. Yes sir, and I came back to Seattle again in 1908 and I went down with Moran Company and I was foreman for them for two years.

Q. And have been in the ship building business since that time?

A. Yes sir.

Q. Where and what?

A. Why, I have been doing some work with Mr. McKay, Stimson Mill company work for them, not on my own hook. But I have worked for different people since then building barges and vessels and repairing them.

Q. You may state what would be the fair, reasonable cost of making the repairs to the steamship Rosalie in the light of your knowledge of the steamship, and based upon the specifications or calls set forth in this survey which I have submitted to you, exhibit 7?

A. To the best of my knowledge, as near as I can gather it, I have gone over it carefully, I think about \$850 would be a fair price for repairing, according to this survey for that ship.

Q. Would you be willing to undertake such a contract for making repairs called for by that survey for that sum?

A. Yes sir.

Q. I now show you libellant's exhibit B, purporting to be a statement of the bill of the Heffernan Dry Dock company dated April 29th, 1911, for repairs on the steamship Rosalie. I hand you a manifold copy of the bill submitted by libellant to us, and ask you if you have examined this manifold copy of exhibit B?

A. I have.

Q. Would it be necessary to dry dock the vessel for the purpose of making repairs that are called for by that survey?

A. It would, yes.

Q. How long would a vessel be required to be in dry dock for the purpose of making these repairs?

A. I do not think over four days. We will say five days at the extreme, but I think not over four days. Four days would repair that ship according to the survey.

Q. The charge for the first day in the dock \$63.80 and subsequent days \$50 a day, is that the usual charge for docking?

A. Yes sir.

Q. Now the next item is for labor, 42 hours blacksmithing. Under the specifications called for in this survey, what occasion would there be for such an amount of blacksmithing?

A. There would be none whatever.

Q. Well, in this survey report it calls for straightening some iron and putting it back. It states that the stem iron be repaired and refastened in place. I will first ask you what the stem iron is and how it is put on?

Q. Well the stem iron is usually a band of iron that fastens over the extreme top or end, that is bent right over the end of the stem and follows clean down until you get to the fore-foot here, which might be six or eight feet.

Q. And is on the immediate front to the fore-foot of the vessel?

A. Yes, continued from the top clear down until you get to the fore-foot, or about five or six feet.

Q. What are the dimensions of the stem iron in width and thickness?

A. It is about an inch and a half by five.

Q. Inch and a half thick by five inches wide.

A. An inch and a half thick by five until we get down to the fore-foot and then it commences to widen out and then until we get underneath here it gets to about half an inch thick and it is about eight inches wide.

Q. How is it put on?

A. Fastened on with bolts perhaps ten or twelve inches long.

Q. One or two pieces?

A. As a rule they put them in in two pieces.

Q. In what way?

A. Well, the bottom just below the rail guard of the ship, they put a scarf on there about four inches with a hole in each end and a bolt driven through the scarf. It is done for this reason, often times a ship runs into a log or driftwood and bruises up the stem and may have to take the stem off or repair it below that point. And the consequence is if we had it all in one piece we would have to take the whole thing off. For that reason it is made in two pieces, so as to take it off from the-guard rail down only.

Q. Now the repairing of the stem, if it was bent or injured by this collision, would that require some blacksmithing?

A. That would require perhaps ten hours, not to exceed ten hours.

Q. I notice the next item in the bill 1636½ hours carpenters and 1465½ hours helpers. That makes in all about 3100 hours for labor. How long is a day's work?

A. Eight hours.

Q. This bill purports to show that the ship was in dock six days in all. That would make something over sixty men working there for the six days. Would that be possible?

A. It could not be possible to have that many men on there. You could not work them nohow.

Q. How many men would it require to do this work in the time that you have mentioned, four days?

A. Ten. I figure on ten men, not to exceed 12 men. I estimated I can repair that ship according to the survey with ten men in five days.

Q. What is the customary price for carpenter's wages?

A. Four dollars and a half a day on old work.

Q. And helpers get?

A. Two dollars and a half to two dollars and seventy-five cents.

Q. Would you say it would be possible to have that many hours of work done on this ship, unless something was done entirely outside of the injuries described in this survey?

A. It would have been impossible.

Q. The next item is 48 hours for caulking. What amount of calking would be required in making the repairs called for by the survey?

A. Well, I think about 24 hours.

Q. Of one man.

A. Yes sir.

Q. That would be equivalent to three days of one man.

A. Yes sir.

Q. At how much a day?

A. Five dollars.

Q. That should be done then for fifteen dollars instead of \$36 as charged here?

A. Yes sir.

Q. Now the next item is 58 pounds of sheet lead. What use would be made of that and where would it go?

A. Well, it is customary on most ships to cover the fore-foot with heavy sheet lead. Perhaps the sheet lead was tore off there and they renewed that. They might have, in order to put the stem in there, they might have had to tear that off and renew that sheet lead.

Q. 38 feet iron bark $2\frac{1}{2}$ in. by $4\frac{1}{2}$ in. What is iron bark?

A. It is Australian hard wood, brought in from Australia.

Q. Where could that be used in making the repairs called for by this survey?

A. I cannot see where it could be used.

Q. The next is 82 wooden wedges. What would they be used for?

A. They would be used in order to wedge off the stem, split it off temporarily.

Q. The next item 1183 feet of iron bark 1x2 inches, 35 feet long. Where would that be used?

A. One by two inches?

Q. And thirty-five feet long.

A. I cannot see where that could be used.

Q. In repairing the stem as called for by this survey?

A. No place to use it there that I can see.

Q. For what purpose is that character of iron bark used for in such a ship as this, one by two inches thirty-five feet long?

A. Well, it is hardly ever used. I do not think I ever used it myself. I do not remember anybody else ever using it, that I have worked for.

Q. If it were used about the ship, it would be in the finishing of the superstructure, would it not?

A. It would be if it were used at all, it would be for grating.

Q. Where would that be used?

A. That would be built cross-wise in that manner, about two inches apart.

Q. Crosswise of what?

A. Just built up for grating, perhaps, in the engine room and things of that sort where there are open spaces.

Q. In the interior of the ship?

A. Yes sir.

Q. But not on the bow or stem of the ship?

A. No, not on the outside; no place for it outside.

Q. Four gallons black paint, would that be used about the stem?

A. Yes, that might be used. There is a space there that is painted black. Of course a little black paint would be used all right.

Q. Now, going further down I see an item here of 96 feet of fir, No. 1 clear 8x24 inches and six feet long. What could that be used for?

A. I cannot see where that could be used. That is in odd size. I cannot see where it could be used on the stem. That is small for the apron and I cannot see for the life of me where they could use it.

Q. The next item 72 feet, No. 1 clear 12x6 12 feet long. What could that be used for?

A. That could be used. The only place I could see where they could use that would be in case they done anything above the main deck; it could have been used in there.

Q. That is in case they renewed the entire apron; they renewed only part of the apron, from the main deck up?

A. Yes.

Q. Now there is an item of 422 feet of fir No. 1, 3x12 inches, twenty feet long. That is plank, is it not.

A. That is outside planking.

Q. Outside planking of the ship.

A. Yes.

Q. There is another item of 2031 feet of fir, No. 1, 3x12 36 feet long. That is also 3 inch outside planking?

A. Yes sir.

Q. That makes in all 3453 feet of fir three inch plank. What could that be used for on this ship?

A. There was enough there to plank the entire ship.

Q. That is to say this plank is used on the outside of the ship, on the hull of the ship from the water line down to the keel?

A. Yes sir.

Q. And how much would it take to plank the whole of that ship, the hold of it from the water line to the keel, where plank of this kind is used on such a ship?

A. Well, it could be easily figured from the size of the ship. She is 160 feet long and she is ten feet deep and about 24 or 25 feet beam. It is easily figured how much planking it would take.

Q. It would not exceed 3400 feet?

A. No, I don't think so.

Q. Now the next item, 84 feet fir 6x12, 14 feet long.

A. I cannot see where he could use that timber.

Q. I find another item here of 196 iron bark 3x8 inches. What could that be used for?

A. Well, that could be used as a chafing bar on the outside of the guard rail of the ship.

Q. The guard rail of the ship is where?

A. Running from the stem clean aft, right at the line of the main deck.

Q. On each side?

A. On each side, sir.

Q. There are 175 pounds of iron one-half inch. What would that be used for?

A. I do not see what he could use that for.

Q. 600 feet timber 20x20 eighteen feet long. Where could that be used?

A. Well, that timber, it is out of proportion entirely for the size of the ship. But if they renewed the apron in there, that timber could be worked down to the size. But it would not be as large as that, and it would not be over ten or twelve feet long.

Q. There is 140 feet fir, merchantable, 10x12 fourteen feet long. Where could that be used.

A. That could be used for the stem.

Q. What is the next item, two bales of oakum. Would it require that amount of oakum to calk the ship?

A. It would not require that much oakum.

Q. Then there is 24 gallons Woolseys copper paint. What is that used for?

A. Well, if they painted the ship all over it would take approximately that much paint.

Q. All over.

A. All over the bottom.

Q. One gallon Von Hovelings paint, what is that used for?

A. I don't know what that could be used for.

Q. They have a charge here of \$240 for stem iron. Is that called for by the survey?

A. It is not.

Q. Any occasion for putting on a new stem iron?

A. I do not see where it would be when it was not called for in that survey.

Q. 72 pounds of bolts. They would be used in putting on the stem iron?

A. Yes.

Q. 430 pounds of galvanized iron. What is that used for?

A. I don't know where they could use that. They have so many items of it there I do not see where they could use all of it.

Q. Then there is 34 pounds of red lead. What would they use red lead for?

A. There was some red lead used to paint the stem iron, but it would not take over a pound. Two or three brushfuls would paint the whole thing. That is all the red lead required for that part of the work that is called for.

Q. By the survey?

A. Yes sir.

Q. So that if that amount of red lead was used there must have been more work done on the vessel than called for by the survey?

A. Yes, if they used that amount of red lead.

Q. Now the next item here, 1060 pounds of yellow metal. What is yellow metal?

A. Yellow metal is a composition metal used on the outside of the ship.

Q. That is to cover the bottom?

A. Yes sir.

Q. That is what you speak of sometimes as copper metal?

A. Yes sir.

Q. How much would be the total that would be required for making the repairs called for by this survey, if all of the yellow metal were taken off her and thrown aside and new metal put on the space of planking called for by that survey?

A. Well, according to the survey they have got a space there of thirty feet long, and measuring it up there to ten feet wide, 10x30 feet square, all that you have got to cover there, and a sheet of metal covers 4 feet by 1 foot. And 16 ounce metal that is generally used on that, a sheet would weigh a little better than four pounds.

Q. So that it would not require more than a fifth of that kind of yellow metal?

A. Not more than a fourth, of the metal that they have charged there.

Q. The amount of yellow metal would be sufficient, charged

here, to cover about two-thirds, nearly two-thirds of the part of a ship that is usually covered with yellow metal?

A. Yes sir.

Cross Examination:

Q. (Mr. Robinson). Mr. Sandstrom, what are you doing now?

A. At present I have been working with Mr. McKay repairing the tug Tillicum.

Q. Repairing the tug Tillicum?

A. Yes sir.

Q. How long have you worked for the Stimson Mill Company?

A. Altogether I presume I have done about two months work for them.

Q. You spoke in your evidence of having worked for them at some previous time, didn't you?

A. Yes.

Q. Did you mean to include that in the two months?

A. Yes sir.

Q. Have you made an examination of the Rosalie since 1902?

A. Yes sir.

Q. When?

A. In 1909 and also in 1910. And I had her on the dry dock when I was foreman of the Morans.

Q. Did you see the Rosalie after she was injured in this collision that we have been talking about?

A. I have seen her but I never paid much attention to her.

Q. Did not make any examination of her?

A. No sir.

Q. And no survey.

A. No sir.

Q. And you know nothing about her injuries except what you gather from the survey which has been introduced in evidence here?

A. That is all, sir.

Q. This bill that you have examined here, you are not prepared to say whether or not it is excessive, considering the items thereon, are the items an excessive charge for the work that was done according to the bill?

A. Yes sir.

Q. Perhaps you do not understand me. We will assume that this work was done on her and all these things furnished. I say are these charges excessive in there? I do not mean in relation to this accident, but suppose they had been required by the accident?

A. Well, I do not know whether there is any real charge in excess or not, sir. If everything was done according to the bill and list here, perhaps it is all right.

Q. That is what I am trying to get at. But the point of your evidence is that the stuff so charged there did not need to be done according to the survey.

A. That is the idea.

Q. You have had a good deal of experience in these matters, haven't you, of repairing vessels after accidents, etc.?

A. Yes, I have repaired lots of them.

Q. Do you know captain James Fowler?

A. Yes sir.

Q. Who is he?

A. He is surveyor for Lloyd's and the underwriters.

Q. I take it from your evidence, if the evidence would show that captain James Fowler passed this bill as one resulting from the accident, that there was an error in the survey—

MR. HUGHES: I object as calling for a conclusion and opinion of the witness.

MR. ROBINSON: I will withdraw the question.

Redirect Examination:

Q. (Mr. Hughes). Mr. Sandstrom, you are now engaged in the work of repairing the tug Tillicum, you say?

A. Yes sir.

Q. That is repairing due to the fact that the Tillicum recently encountered an obstruction in Shilshole bay, where work for the Great Northern had been done, and she was sunk, is that it?

A. No, that was another vessel, the La Paloma.

Q. You are doing work on the Tillicum?

A. Yes sir.

Q. Along with Mr. McKay?

A. Yes sir.

Q. At Mr. McKay's dry dock?

A. No sir. Doing it at the Stimsons. Just repairing a guard, doing it between times while she is lying at the dock.

Q. Then you are working with Mr. McKay under contract for repairing the Tillicum, is that it?

A. Not contract. I am working there, we worked yesterday. And perhaps I will not work there again for two or three days. Depends when she comes in, and then they go down there and do a little work when she is in.

(Testimony of witness closed.)

ANDREW M. MCKAY, recalled on behalf of the claimant, testified as follows:

Q. (Mr. Hughes). You formerly testified in this case as to the damages to the scow injured in this collision with the *Rosalie*?

A. Yes sir.

Q. You did some repair work on the scow?

A. Yes sir.

Q. Mr. McKay, you are engaged in the shipbuilding business?

A. Yes sir.

Q. At Ballard.

A. Yes sir.

Q. You have a dry dock of your own there?

A. An interest, a third interest.

Q. With whom?

A. Jacobson and Erickson.

Q. What is the name of your concern?

A. The Golden Garden Ship Yard.

Q. How long have you been in the shipbuilding business?

A. Twenty-four years.

Q. How long have you been engaged in that business at Ballard?

A. About nineteen months.

Q. And where prior to that time?

A. Greater part of the time with the Stimson Mill company.

Q. Have you built many vessels?

A. No sir.

Q. You have done repairing of vessels?

A. Yes, repairing. I have built small boats, forty or fifty feet long.

Q. Have you examined this survey, exhibit No. 7.

A. Yes sir.

Q. Have you inspected that survey and made an estimate for the purpose of determining what would be the reasonable cost for making the repairs called for by that survey?

A. Yes sir.

Q. Are you acquainted with the cost of labor and materials in doing that class of work in this port?

A. Yes sir.

Q. Were you in 1911?

A. Yes sir.

Q. Now what would be the fair, reasonable cost of making all the repairs to the *Rosalie* called for by this survey exhibit No. 7?

A. About \$850.

Q. Would you be willing to undertake to do the work upon her today for that sum of money?

A. Yes sir.

Q. A bill has been rendered, an itemized bill, introduced in behalf of the libelant in this case, of which I show you a manifold copy, and ask you if you have examined that before?

A. Yes sir.

Q. Would it be necessary to put the Rosalie in dry dock in order to make the repairs called for by that survey?

A. Yes sir.

Q. How long would it be necessary for her to be in the dock in order to make these repairs?

A. About four days.

Q. How many men could be successfully and advantageously employed in making these repairs during that period of time?

A. Not any more than 10 or 12.

Q. There is an item here, a charge for 42 hours blacksmithing work. Would that be required to do the work called for by this survey?

A. The only blacksmith work that I know could be done on that is them bolts that fasten on that stem iron.

Q. The straightening of the stem would require some?

A. Yes sir.

Q. How many hours blacksmith work, would you say in all, might be required to do the work called for by this survey?

A. Oh, about 12 hours.

Q. Now there is an item of 1638½ hours for carpenters and 1465½ hours for helpers. Could that amount of men be employed doing the work called for by that survey?

A. No sir.

Q. Would it be possible to work them on that vessel in doing the work they have called for by that survey?

A. No sir.

Q. There is an item of 48 hours calking. How much calking would be required to do the work called for by that survey?

A. About three days.

Q. Of one man.

A. Yes.

Q. At eight hours a day?

A. Yes.

Q. There is an item of 58 pounds of sheet lead. What could that be used for, or would it be required under this survey?

A. They would use some of it. I don't know how many pounds it would take to cover the fore-foot. They would want some sheet lead to cover the fore-foot.

Q. There is an item of 38 feet of iron bark $2\frac{1}{2}$ by $4\frac{1}{2}$. What could that be used for under this survey?

A. I do not know what it could be used for.

Q. Would iron bark of that dimension be required for any repairs to the stem or apron called for by the survey?

A. No sir.

Q. There is another item here of 1183 feet iron bark 1x2 inches, 35 feet long. Where could that be used on a vessel of that kind?

A. I don't know.

Q. Could it be used about the repair of the stem for injuries such as are described in that survey?

A. No sir.

Q. That iron bark is narrow strips of hard wood one inch thick and two inches wide and 35 feet long, commonly used for grating purposes?

A. Yes sir.

Q. And that would be in the hold or interior portions of the ship?

A. Yes, stepping, etc.

Q. Four gallons of black paint called for in this bill. How much black paint would be required for such repair as called for by the survey?

A. A gallon of paint covers 200 feet on an average, and it would be 10x30.

Q. That would take about a gallon and a half of paint?

A. Yes sir.

Q. There is a gallon of white paint. Could that be used?

A. Yes sir.

Q. There is 30 feet of ceiling 1x3 inches, what could that be used for?

A. 1x3?

Q. Yes.

A. That might be used up on top of the house.

Q. That would not be for repairs caused by such a collision as this would it?

A. It might be on top where the house comes, there might be some little pieces where they might have to put in a few short pieces.

Q. At the top just back of the stem?

A. Yes, above the main body, there might be a few pieces broke off.

Q. There is an item of 96 feet of fir No. 1 clear, 8x24 and

six feet long. Could that be used in making the repairs called for by this survey, if so, where?

A. 8x24. No, I don't know where that could be used.

Q. The next item is 72 feet of fir, No. 1 clear, 12x6 inches and 12 feet long. Could that be used and if so where?

A. They might use that part of it for that apron inside, above the main body, above the hull, away up inside.

Q. That is what you assume that instead of repairing the whole apron they repaired only a part of the apron from the deck up?

A. Yes, they might use that.

Q. The next item is 256 feet of fir, No. 1 clear, 8x24, 16 feet long.

A. I don't know where that could be used.

Q. Then there is an item of 1422 feet of fir No. 1, 3x12 inches, twenty feet long. Another item of 2031 feet of fir No. 1, 3x12, thirty feet long. That is three inch planking?

A. Yes sir.

Q. Of lengths of 20 and 30 feet.

A. Yes sir.

Q. Is that the class of planking used to cover the bottom of the ship?

A. Yes sir.

Q. Could that possibly be used in making such repairs as are called for by that survey?

A. No sir.

Q. How much of it, what part of it would require that class of deck planking, if they made such repairs as are called for by this survey, I don't mean deck planking but planking?

A. It would not take near a quarter of it.

Q. Would that be enough to cover the entire bottom of the ship?

A. Well, I could not say that, it would cover a good part of it, but I could not say whether it would cover it all or not.

Q. If the ship is 160 feet long and 10 feet depth, that, on the two sides would take something over 3200 feet to cover the whole outside of the hold, would it not?

A. Yes.

Q. So that this would be enough to practically cover the entire bottom of the ship, would it not?

A. Yes sir.

Q. And there is 84 feet of fir, No. 1, 6x12, fourteen feet long. Where if at all could that be used in making the repairs called for by this survey?

A. I do not know.

Q. Another item of 196 feet of iron bark 3x8. Where could that be used?

A. They could use that for a chafing piece on the guards.

Q. Forward?

A. Yes. Only a little, you know. They could use part of it for guards, 3x8 for a chafing piece on the outside of the guard.

Q. The guard is what we speak about as the guard rail of the ship?

A. Yes.

Q. Then there is an item of 175 pounds of half inch iron. What could that be used for, if at all, in making these repairs. What is half inch iron used for?

A. Too small for a vessel that size, cannot use it. I do not see what you could use it for for that sized vessel.

Q. If they did put it on for the repairs in that part of the ship called for by the survey?

A. I don't see what they could use it for.

Q. Now there is 600 feet of timber 20x20 inches 18 feet long. What could that be used for?

A. Well, they might use part of it for the apron; there is a lot of work to do inside, they might use a part of it. But it would not be over six or eight feet long. They might use a part of it.

Q. There is 140 feet of fir, merchantable, 10x12 inches, 14 feet long.

A. That would be used for a false stem.

Q. And there are 2 rolls of felt and 2 bales of oakum, that would be used for what?

A. That felt is put on with the yellow metal. The two bales of oakum is used for calking.

Q. And if no more was done than is called for by this survey would it require that amount of felt? and oakum?

A. No. It would not take two bales of oakum for the amount of labor that is attached to it.

Q. And then there is the rubber paint. Would that be sufficient to paint the whole bottom of the ship?

A. Yes.

Q. And there is a stem iron \$240 charged for it. Was there any necessity of putting on an entirely new stem iron under the specifications in this survey?

A. No sir.

Q. Would such a stem iron cost \$240, even if it were used?

A. To put on that repair?

Q. No—

A. You mean on this survey?

Q. Just answer that question.

A. No sir, it could not possibly cost that much.

Q. 72 pounds of C. S. bolts, what is that?

A. I don't know.

Q. 450 pounds of galvanized iron. Where could that be used in making such repairs as are called for by the survey?

A. It don't specify the size of it. There could be part of that used for drift bolts.

Q. Then fittings. It is not specified what.

A. No.

Q. What is covered by the term "fittings"?

A. I don't know.

Q. 34 pounds of red lead. What would that be used for, if at all?

A. Could not be used on that except a pound, might use a pound or two pounds. It would not take any more than a pound, that would cover the stem iron. They always cover the iron with red lead to protect that stem iron. They put red lead on it. They don't use copper paint.

Q. So if that amount of red lead was used it was used elsewhere on the boat?

A. Yes sir.

Q. And 450 pounds of galvanized spikes, could they be used about the repair of the stem under these specifications set forth in the survey?

A. Not so much.

Q. About how much would be?

A. About a quarter of that.

Q. Then there is 1060 pounds of yellow metal. That is what is spoken of as copper plate, copper metal, is it?

A. It is termed metal, it is a composition.

Q. That is just to cover the bottom of the boat, is it?

A. Yes sir.

Q. That would be enough to cover nearly two-thirds of the bottom of this ship, would it not?

A. Yes sir.

Q. It appears from a former survey that has been furnished me by the libellant, that some time about 10 months before there was an injury to the stern of the ship, an injury which damaged the propeller, at which time also some of the copper plates were torn off from the stern, and about 60 yellow metal plates put on. Would that, together with the 1060 pounds here spoken of be practically sufficient to cover or recover the whole bottom of the ship?

A. I have not figured it out, but it would be pretty close to it.

Q. Yellow metal nails are used in putting on the yellow metal?

A. Yes, putting on these sheets.

Cross Examination:

Q. (Mr. Robinson). Are you in the shipbuilding business now?

A. I am, repairing.

Q. How extensive a plant have you got out there? Have you got a dry dock?

A. No. I have marine ways, roller ways.

Q. And your experience has been largely with boats smaller than the *Rosalie*, I take it?

A. Oh no. I repaired the schooner *Stimson*; *Globe Navigation* boats; four masted schooners, and also the tug *Stimson*.

Q. You repaired the barge, too, that was in this same collision?

A. Yes sir.

Q. You are working on the *Tillicum* now?

A. Yes.

Q. You did not see the *Rosalie* after this accident?

A. No sir.

Q. The testimony you have been giving here is entirely based upon the survey and not upon actual knowledge of the job?

A. Yes, on the survey.

Q. Now, calling your attention to this bill that you have been using. For instance, there is 600 22x18. What does that "600" mean?

A. Feet.

Q. Board measure.

A. Yes.

Q. And the 1422 fir, which you have testified about, the 3x12 and 20 feet long and the 2031 fir, that is board measure?

A. Yes sir.

Q. Then you do not have an even square, you have to divide by three to cover the whole bottom, do you not?

A. Yes.

(Witness excused.)

Recess taken until 2 p. m.

Afternoon Session

Present: Mr. Robinson, for the libelant. Mr. Hughes, for the claimant.

JOHN L. HUBBARD, a witness called on behalf of the claimant, being duly sworn, testified as follows:

Q. (Mr. Hughes). Your full name?

A. John L. Hubbard.

Q. What is your business, Mr. Hubbard.

A. Manager of Hall Brothers Ship Yard.

Q. You are a shipbuilder by trade?

A. Yes sir.

Q. How long have you followed that business?

A. Since I was 18 years of age. I am now forty-eight.

Q. How long have you been manager of Hall Brothers Shipbuilding Yard?

A. Eleven years.

Q. Your business there is repairing ships, is it not?

A. Yes sir.

Q. Are you acquainted with the Rosalie?

A. To some extent.

Q. I have asked you to examine the report of a survey of injuries to the steamship Rosalie, which occurred on the 8th of April, 1911, in collision with a scow being towed by the tug Tillicum. The report was made by James Fowler and by Frank Walker, as surveyors. You have made an examination of the report for the purpose of determining what would be the reasonable cost of making the repairs called for by that survey?

A. Yes, I have looked that over.

Q. Have you made your figures and estimates as to the cost of material and labor and all the elements that go to make up the cost of a repair of a vessel according to that survey?

A. I have.

Q. I wish you would state, first, what would be the maximum cost that could reasonably be incurred for making the repairs called for by that survey?

A. \$1050.

Q. What do you estimate would be the ordinary, reasonable cost, estimating the amount of labor to be such as would naturally be anticipated from this survey?

A. Well, that is assuming in this maximum figure that I have given here, I have given the outside cost, that is what you mean, is it?

Q. Yes. Now I ask you, what would be the reasonable and probable expense of making that repair according to that survey?

A. Well, I will state that in making this estimate here, I calculated on the basis of a given number of men so many days, and in that estimate of labor I have made a very liberal

allowance, although I think it could be cut down one-third, probably.

Q. That would reduce it how much?

A. Well, the total that I have allowed for labor here amounts to about \$560. Cutting that down one-third would make it about \$400 to \$425 the cost of the labor.

Q. How long would the ship have to be in the dock?

A. Five or six days; six days at the outside

Q. Well, did you figure in your outside figure how many men you would have employed for that period of time?

A. As I stated, 18 men I had calculated on, but I believe it could be done by twelve.

Q. And not to exceed five or six days.

A. Yes sir.

Q. In which event the expense would be about \$900.

A. \$900 to \$950, somewhere now.

Q. Would you be willing to undertake to do the work in accordance with this survey for that sum?

A. I certainly would for \$1050, my maximum estimate.

Q. Well, you think you could do it for \$1050?

A. Well, if I thought there was close competition in the bids for the work, if bids were being asked for, I probably would bid in the neighborhood of \$900 to \$950, if I was anxious to get the job.

Q. Now that would be allowing for removing the planking on one side for the purpose of installing the new stem and apron?

A. Yes, in accordance with the recommendations in that survey.

Q. Could that work be done without removing the planking?

A. I have frequently renewed stems and aprons without doing it.

Q. That would diminish the expense very materially, would it not?

A. Indeed it would.

Q. And it would be unnecessary to put on new planking or new copper or metal plating?

A. That would eliminate the necessity for that, only a limited amount around the stem where the fastening would go in the stem and apron, the copper sheathing would have to be removed.

Q. How do you repair a vessel by putting a new stem and apron in without moving the planking, explain that?

A. Why, I usually split out the wood by bering it off in short sections and splitting it out with split bars. We could

do that and remove it and then take jack screws or some means of spreading the planking apart to allow a little more room than exists, until the timber can be dropped down in place. You understand the stem has what we call a rabbit and the plank, the narrowest point is at the extreme forward end and increases in width as it goes aft. Well, that will not permit the stem to be slipped back in from forward owing to the planking narrowing up there at the forward part of this rabbit. If we can spread it open with jack screws sufficiently, why we can slip that in there until the large part is past the narrowest part in the plank, and let go our jack screws or whatever means we have used there to spread the plank and let them spring back into the rabbit, in place. That is often done. And then again, we have done the job by putting up a gin pawl and lifting the stem up and lowering it down so that the large part would enter back of the rabbit. I could make a sketch of that and give you a better idea of the point I am trying to make. For instance, the stem is made of 12 inch timber. Well, the aft part of that stem would be 12 inches wide, and where the plank would end on the stem, possibly it would not be over seven or eight, and that is where it is put up against the stem and we put on what is called a rabbit to give a corking seam there, and so that makes a V shape impression on each side of the stem that the plank fits into. Well now, you can drop that in from above, allowing this large part of the stem to come to the natural position, and drop it down from above. That can be done but the most practical method is to use a jack screw and spread the planks apart and shove it right in from forward.

Q. According to this survey, would there be any necessity for putting on a new stem iron?

A. I would think so, if there was sufficient damage there to damage the stem, it would damage the stem iron.

Q. The report suggests simply the repairing and refastening of the stem iron.

A. Probably bent up, I would not think broken. I would think probably badly bent, and it would be necessary to take that to the forge and straighten it out and get it to shape again, and then fasten it back on the new stem.

Q. In that case no new stem would be necessary?

A. No sir.

Q. What would be the reasonable expense of shaping it up again, forging it up?

A. Oh, I would think twenty-five dollars would be the maximum.

Q. Notwithstanding the report of the survey, that the

stem iron be repaired and fastened, the libellant has introduced a bill in evidence showing a charge of \$240 for a stem iron. Would that be a reasonable charge for a stem iron for such a vessel?

A. That would be an excessive charge.

Q. And what would be a reasonable charge?

A. Fifty dollars.

Q. There is a charge here for 1060 pounds of yellow metal. Is that a reasonable amount of yellow metal to be required for making repairs called for by this survey?

A. It is a very excessive amount.

Q. And there is 231 pounds of yellow metal nails. The same would be true as to that.

A. Well, that would correspond to the amount of metal given there. They would average one pound per sheet, that is the ordinary allowance for nailing on the sheets.

Q. If the plank were removed on one side for the purpose of putting in a new stem and apron, how is that done if they do not pry that open as you describe?

A. Got to split them off back to the butts or make new butts.

Q. Now, I want you to explain how these are put on, that is whether they are put on so as to stagger across?

A. Well, when the vessel was built the keel would be laid and then the frames set up, and then the vessel ceiled on the inside with timbers. Some of them are entirely ceiled up inside and some are not. Some are left open for space to allow air to the frames. After that is done they begin at the bottom down against the keel, and there is a rabbiting inside next the keel similar to the one extending around the stem, which gives a square edge for the first plank to butt against to form a calking seam, so that they can be made water tight. That first strake is called the garboard strake, that is put on a vessel like the *Rosalie*. I would think it would be 14 inches wide and three inches thick, and that is fastened on with spikes. And on larger vessels, I do not think it is on the *Rosalie*, but on larger vessels they use lugs, treenails, these lugs or pins are driven through the wood on the outside and wedged on the inner end, on the inside of the ceiling, to keep the pin from pulling out—or treenail. Then the next course is put on right abutting against that until they reach the height the vessel is planked. Now a vessel like the *Rosalie* you would have about 18 strakes of plank from the keel up to the deck line, that is as far as you would plank her.

Q. What I want to get at is whether these planks are the same length as are used in planking the vessel?

A. Yes, they vary in lengths. They usually stagger the

butts, you know, so that there don't two planks butt on the same frame; they have several planks between.

Q. And these planks would vary in length from 10 to 30 feet?

A. Yes sir.

Q. One plank would come back to a certain butt, say 10 feet?

A. The next one probably would come 12 feet, to the next frame or two frames from that, 14 feet. Probably the next one about 18 feet, and then they might stagger back again and get one at 12 feet, and zig zag back that way, so as to allow about three frames between the butts.

Q. So that if you were to take off the plank on the starboard side, any of them, you would only take off the length of a plank, whatever it was?

A. One length of plank.

Q. And some plank taken off would be 10 feet and some 12 and some 14 or 16, etc.

A. Yes sir.

Q. The first length of plank next the stem is all that would be taken off?

A. Yes, what we call the fore-hoods, the hood ends.

Q. About what amount of timber, if you had to take off the plank on the starboard side, about how much would have to be removed and replanked, what amount of new plank?

A. To remove the stem I do not think any would be necessary.

Q. Suppose you had to remove the apron?

A. Well, I do not think it would be necessary to remove the plank; it could be installed without removing.

Q. If that were done, then it would not be required to put any new planking. The amount of planking called for in this bill would not be required?

A. No. From the survey there it says plank on one side to be renewed. That would indicate that there must be some damage to that plank.

Q. The survey, however, does not say there was any planking but simply around the stem and apron.

A. Well, in this estimate here that I have given you, I have based it on the assumption that the first length from the bow on one side all planking would have to be renewed. That is embodied in this figure that I gave you of \$1050.

Q. Suppose a new stem were put in. What size of stem and what kind of timber would be used for it?

A. I think the stem of that vessel would probably be 10x16,

something like that. And it would be in the neighborhood of 16 feet long.

Q. Now how about the apron? The apron is back of the stem?

A. The apron would be a larger timber than that, as the vessel widens out going aft, it would take a wider piece of timber aft.

Q. It is smaller at the forward side.

A. With the stem ten inches, that timber would side probably 14 inches. I would say it would be 14x16 would be an extremely heavy apron for that vessel.

Q. And if the full stem were put in, the full apron would be renewed.

A. Why, not any longer than the stem, not as long, quite. 16 feet—well it would not be that long, it only reached to the main deck, and the apron would not be to exceed 12 feet.

Q. And these stems and aprons are usually fir?

A. Yes sir.

Q. About what would be the ordinary life of the wood?

A. Oh, about 12 or 14 years.

Q. Now there is nothing to indicate in this survey whether the apron was required to be renewed because of its age. If the vessel had been in use at that time for 15 or 18 years, and the repair of the stem being made, would it be necessary to put a new apron in on account of the age of the apron?

A. They very probably would find decayed wood in there.

Q. A collision with the bow of a vessel that would damage the stem and the apron both, would be sufficient to cut the ship down so that she could not get ashore, would it not?

A. Well, it would be very apt to cause serious leakage forward there. Probably could be controlled by pumps; though a wooden vessel would swamp up so that they do not leak a great volume of water.

Q. It would take a very unusual collision to break the apron?

A. It would take a very heavy collision to damage the stem and apron both. If the apron was damaged in the collision I would say that it would damage the planking also, and that would account for this recommendation regarding the planking.

Q. A collision in which both vessels were practically stopped in the water before the collision took place, or nearly so, one being merely a scow and the other boat like the *Rosalie*, would that be likely to be heavy enough collision to break the apron, if the apron were sound?

A. I do not think so.

Q. There is a charge of 1183 feet iron bark 1x2 inch 35 feet long. Would that be used in making such repairs as are called for by this survey, or as would arise from such a collision?

A. I cannot see any place where it could be used. Nothing to indicate that the vessel is sheathed with iron bark and from the yellow metal sheaths there noted would indicate she was sheathed with yellow metal; and if she was not, she would not be sheathed with iron bark. And in cases where iron bark sheathing is used it is usually where vessels ply in icy waters, and I do not think the *Rosalie* has any.

Cross Examination:

Q. (Mr. Robinson). In making this estimate here for labor how much profit did you allow for yourself?

A. Why, about the usual amount, we figure about 11%.

Q. About eleven per cent.

A. Yes, for overhead charges.

Q. Mr. Hubbard, did you see the *Rosalie* after she was in this collision?

A. I did not.

Q. You base all your testimony upon that survey there?

A. Yes sir.

Q. Was that survey specific enough for you to make an estimate on this matter?

A. I think so yes sir, from my knowledge of other vessels and the general knowledge of this vessel. I have seen her a number of times. I think I have had her in the dry dock.

Q. Mr. Hubbard, is it not often a matter within your own experience, that when you come to do work of this kind especially when you have not examined the vessel, that matters turn up that you have not anticipated?

A. Yes, that is true.

Q. Mr. Hubbard, if it should be a matter of evidence here that this survey was made after the collision, the survey which you have seen, and that subsequently this bill which you have also seen I think, for \$3385.32 was presented as showing repairs made under the survey and approved by the surveyor and the Insurance company and settled on that basis, would you say that there has been a gross mistake somewhere?

MR. HUGHES: I object as incompetent.

A. Well, the bill looks entirely out of keeping with the recommendations in the survey.

Q. I do not suppose you have been shown the report of the surveyors, after the repairs were made? You have not seen that, have you?

A. No, I have not.

Q. (Mr. Hughes). This purports to contain it, Mr. Hubbard, the last part of it.

A. I beg to retract that statement. I have read this.

Q. (Mr. Robinson). Now you take that bill again, Mr. Hubbard, and look at the heading there before the items. Is that substantially the heading describing the recommendations made in the survey?

MR. HUGHES: I object as not the best evidence and calling for a conclusion.

MR. ROBINSON: The witness testified to it and I wondered if he considered it in the same way.

Q. I will change the question. Just look at the bill and see whether the heading purports to describe the recommendations made in the survey?

MR. HUGHES: I renew my objection.

A. Apparently it corresponds to the recommendations here. There are a number of items mentioned here that would be contingent upon this work being done, that is specially enumerated here in the bill that are not in the recommendations. Such as corking seams and butts, which would be necessary if the plank is put on.

Q. That is a common thing, is it not?

A. Yes sir.

Q. You have seen a good many of these and done work under these surveys haven't you?

A. Yes sir.

Q. And there are a lot of things required in that survey that are not specially mentioned?

A. Yes sir. Yes, they say you have to put on a piece of plank; they do not say that you have to drive spikes or bolts and calk the seams, but that follows, that must be done to make a finished job.

Redirect Examination:

Q. (Mr. Hughes). Mr. Hubbard, if a survey were made upon the basis on which you took the contract to make repairs on a vessel, and in attempting to make the repairs there appeared more extensive injuries to the vessel, or other repairs were found to be needed than those covered by the survey, would not a new survey be called for before you were authorized to go a head under your contract.

A. As a rule the surveyors would be called and would authorize the extra work done there. The contractor usually would be anxious to get an extra, if there was any extra work showed up so there would be extra compensation for it.

Q. You have been asked about this bill being passed upon by the surveyor. Within your knowledge and experience in dealing with companies, like the libellant in this case, do you know whether or not it ever occurs that the practice is ever adopted by this company or other like companies, to wait for their annual docking until they have some accident, and then work the annual overhauling of the ship into the repairs on account of and charge to the injury?

A. I do not think I could say that. I can say this, though, that where vessels have been injured in collision or something of that kind near the time that they would be due for their annual overhauling, that they would take advantage of that time and do their annual overhauling when these repairs were made, to avoid the expense of that later on, which is good business, for that matter for any one to take advantage of.

Q. (Mr. Robinson). Mr. Hubbard, you say that if additional work was done that would require another survey?

A. Yes, well, not what you would call a survey. As a rule these matters are left to the supervision of the surveyors, and he would simply call their attention to it and they would authorize more work, if necessary. It would not be a formal survey.

Q. Do you mean that a surveyor for an Insurance company would authorize more work and still charge it to the accident?

A. Well, I don't know where he would charge it. If he saw that the work was necessary, he would be as anxious to have it performed as the contractor of the job would be to perform the work. They would want to see the vessel thoroughly repaired.

Q. That is the Insurance company would want to.

A. An inspector in charge for either the owners or the Insurance company. If they are just men they would not want the vessel half repaired.

Q. Now you have testified at length about this matter. Would you say then, having regard to this whole thing, the testimony you have given, if the insurance company paid for this accident on the basis of the bill that you have been testifying about, they paid for more than they should have.

A. Yes sir.

(Witness excused).

CHARLES REDMOND, a witness called on behalf of the claimant, being duly sworn, testified as follows:

Q. (Mr. Hughes). What is your name?

A. Charles Redmond.

Q. You were subpoenaed to come here just now?

A. Yes sir.

Q. And came up in answer to that subpoena served by the Marshal?

A. Yes sir.

Q. What is your business, Mr. Redmond?

A. Ship carpenter.

Q. How long have you been a ship carpenter?

A. Oh about 26 or 27 years.

Q. Were you working for the Heffernan Dry Dock company in April 1911?

A. Yes sir.

Q. Were you one of the workmen engaged in repairing the Rosalie when she was in the Heffernan Dry Dock in April, 1911, after her collision with the Tillicum?

A. Yes sir.

Q. Will you tell what repairs were made upon her at that time.

A. Well, as near as I can recollect, we put a new stem on her, which was a hard wood stem, iron bark, as they call it. Iron bark stem. There were two pieces of guard about 14 or 15 feet long, somewheres there, as near as I can recollect.

Q. Iron bark guard?

A. I do not remember whether iron bark or not. I think probably the outside piece was iron bark. As a general rule it is. And then there was a little piece of apron put in on the inside from the main deck up to the head of the stem, six inch stuff there. And then there were little minor repairs inside there, what we had to tear out to get at it, some little fitting of boards and things like that.

Q. Any plank taken off of her?

A. Not to my recollection there was not.

Q. Was there any of the yellow metal taken off in making these repairs?

A. Well, that I do not remember whether there was any taken off or not. I could not say for sure.

Q. Do you remember whether they put on a new stem iron or put the old one on?

A. No, I cannot remember whether the old one was put on or whether a new one was put on. I could not say. I could not say for sure whether the old one was used or the new one.

Q. What you describe is substantially all the repairs made at that time?

A. That is all the repairs I can remember, but just a few minor repairs that you always have to fix up, you know, after the stem goes on, of course.

Q. Do you remember whether there was any other part of the ship repaired at that time?

A. No, not to my knowledge.

Cross Examination:

Q. (Mr. Robinson). Who was foreman in charge of that ship, do you remember, in charge of the work?

A. Hollywood.

Q. Was Simon on the job? He was superintendent at that time, was he not.

A. He was superintendent but he never was around there very much. He might come down there in the morning and go away.

Q. He came and saw the work occasionally?

A. He was naturally supposed to. I could not tell. He might be down and I not see him.

Q. Was Hollywood on the job all the time?

A. Yes sir.

(Witness excused).

CHARLES MARTIN, a witness called on behalf of the claimant, being duly sworn, testified as follows:

Q. (Mr. Hughes). What is your business?

A. Ship carpenter.

Q. You were just subpoenaed by the Marshal and brought up here to testify?

A. Yes sir.

Q. You are working where now?

A. Down at the Alaska steamship.

Q. In repairing what vessel?

A. The Alameda.

Q. And you are working along with Redmond are you, on that job?

A. Yes sir.

Q. How long have you been a ship carpenter?

A. About 27 years.

Q. Where were you working in April, 1911, and for whom?

A. Down in the Dry Dock.

Q. In Heffernan's dry dock.

A. Yes sir.

Q. Are you one of the men engaged in repairing the Rosalie when she was in the Heffernan dry dock in April 1911?

A. Yes sir.

Q. Will you tell what repairs were made on the Rosalie at that time?

A. Yes. The only thing I can remember, we took off the old stem and put on a new one.

Q. What kind of a stem did you put in?

A. Iron bark stem; and put on a guard, an iron bark guard and an apron from the deck up.

Q. That is what they call the apron, the timber used behind the stem?

A. Yes. Used for hood ends to fasten to the stem, to fasten to.

Q. About what was the size of that timber, about, from the deck up, just behind the stem?

A. I don't remember.

Q. That would be a continuation of the apron up to the top.

A. Sure, yes sir.

Q. Now that is all you remember being done at that time?

A. Yes, and all the lockers and things inside that had to be fixed up after we got the stem in, and the rails we put on top of the deck.

Q. That is in the forward part.

A. Yes sir.

Q. Now that was all, was it?

A. That is all I remember.

(Witness excused).

Hearing adjourned.

SEATTLE, WASHINGTON, *July 3, 1914.*

Present: Mr. Robinson, for the libelant. Mr. Hughes, for the claimant.

DAVID HOLLEYWOOD, a witness called on behalf of the libelant, being duly sworn, testified as follows:

Q. (Mr. Robinson). What is your business, Mr. Hollywood?

A. Superintendent.

Q. Who for at present?

A. Seattle Construction company.

Q. In April 1911 who were you working for?

A. Heffernan Dry Dock company.

Q. Do you remember, Mr. Hollywood, of repairs being made on the steamship *Rosalie*, in April 1911, as a result of a collision?

A. Yes sir.

Q. Showing you libelant's exhibit "B", Mr. Hollywood, have you ever seen that bill before?

A. Yes sir, I have seen it.

Q. Were you foreman of the crew that worked on that boat?

A. Yes sir.

Q. Mr. Hollywood, I will ask you if you remember what that item of 58# sheet lead was used for?

A. Yes, that is the chafing piece on the vessel's forefoot, at the end of the vessel's stem.

Q. What was the general nature of the repairs?

A. When she came on the dock her stem was knocked in, her apron piece was burst, her breast hooks were gone; the deadwood from the forefoot was started, and the quickwork on top of the guard was gone, and the timber ends or wood ends along on the starboard side all the plank was gone or started.

Q. Mr. Hollywood, this bill contains among other items 38 feet iron bark $2\frac{1}{2} \times 4\frac{1}{2}$ inch, and 1183 feet iron bark 1x2 inches and thirty-five feet long. What was that stuff used for?

A. That first item of iron bark was the rail on top of her quick work and is composed of one piece 2x4 and the iron bark chafing strips are nosed over it to make it look like a rail; it is rounded over on each side and fastened to the 2x4.

Q. The rail above the ship's deck?

A. Yes.

Q. Part of that was carried away.

A. That finishes into the stem whatever was stripped. When the stem came off it takes part of the rail on both sides.

Q. This second item of 1183 ft. of iron bark 1x2, what was that used for?

A. That was for chafing on the vessel's hull about the water line.

Q. Was any of that stuff used for making gratings or any interior work or furnishings for the vessel?

A. No.

Q. Now here is an item of 96 feet fir 8 in. by 24 in., 6 ft. Can you recollect what that was used for? I will read you three items here of timbers: 96 ft. 8 in. by 24 in., 6 ft.; 72 ft. 12 in. by 6 in., 12 ft.; 256 ft. 8 in. by 24 in., 16 ft.?

A. That 8x24, 16 is for the apron. That 8x12 would be used for breast hooks and the 12 x6 would be used for strakes, when the apron is gone the column underneath the deckbeams was carried away and that had to be renewed on each side.

Q. Now, among other things this bill contains an item of 24 gallons Woolseys copper paint.

A. Yes.

Q. What was that used for?

A. Painting the vessel's hull.

Q. How much of it did you paint?

A. Well, all her hull was painted.

Q. Why was that?

A. Because in hulls of vessels, as soon as you take a vessel out of the water, after being painted, the paint is no longer any good; it has lost its virtue altogether.

Q. You mean that exposure to the air has affected it?

A. Yes sir. It is always the case on a job when a vessel is taken out you have to paint her hull.

Q. Now there is an item here of 430 lbs. galvanized iron fittings; what was that used for?

A. Galvanized iron fittings?

Q. Yes.

A. There are knees in back of the rail, stanchions, and there are the knees, iron knees back of the breast hooks, and then of course all the fastenings were galvanized.

Q. There is an item here of 34 lbs. red lead. What was the red lead used for?

A. Well, that would be used in the top of the deadwood, wherever you put two pieces together that are going to be closed in or where you cannot get at them, it is always good practice to cover it with some kind of paint to take care of it, and we generally use red lead paint.

Q. 1060 lbs. yellow metal. What was that used for?

A. Sheathing.

Q. How much of the ship did you sheath with that?

A. Well, her strakes, if I remember right, were about forty feet—her planking was somewhere about forty feet long, so in stripping the starboard side to get the apron on, you have to go back to the original butts, that would be forty feet of the ship from her keelline up to the top of the ship line that you would have to sheath altogether.

Q. You saw this ship, of course, when she first came into the dry dock?

A. Yes sir.

Q. Did you use more yellow metal on her than was necessary to repair the forward part of the ship?

A. No, absolutely not.

Q. 231 lbs. yellow metal nails, were they necessary to put on this yellow metal?

A. Yes sir.

Q. Was there any part of the upper works back of the stem that had to be repaired?

A. Yes sir.

Q. What had to be done in that?

A. The upper deck was started and her main deck was started back to the forward hatch.

Q. Were there any interior fittings between the decks, lockers or anything like that, that had to be fixed?

A. Yes, there was a lamp locker and some work forward.

Q. Do you remember what was done with 30 ft. of ceiling 1x3?

A. Yes sir.

Q. Where was that used?

A. She has tongue-and-grooved inside of her toothpick; that naturally above the guard the inside was ceiled up with tongue-and-grooved ceiling. That had to come out to get the apron in.

Q. Where was this oakum used?

A. In corking the vessel.

Q. Was it necessary to have two bales of it for the work that you did there?

A. Most decidedly.

Q. Mr. Hollywood, was anybody representing the Inland Navigation company there looking after these repairs when she was on the dock?

A. Yes sir.

Q. Who?

A. Mr. Bishop.

Q. Was Mr. Walker there?

A. Mr. Walker was the man that made the survey.

Q. Did he inspect the vessel when she came off?

A. Yes sir.

Q. Is it a fact, or do you know, by whom the directions for the repair of the vessel were given?

A. Mr. Walker ordered the work done and left Bishop there to see that we did the work carried out as he ordered it.

Q. I will ask you to look over that bill again, Mr. Hollywood, and tell us whether there is anything on that bill that was not used in the making of these repairs around the stem and bow of that vessel, with the exception of that paint. Look the whole bill over.

A. There is nothing here that I can see that would not be used for it.

Cross Examination:

Q. (Mr. Hughes). You were foreman for the Heffernan Dry Dock company?

A. Yes sir.

Q. For how long?

A. Five years.

Q. Up to what time?

A. The 15th of last September.

Q. Since that time you have been with the Construction company?

A. Yes sir.

Q. Mr. Hollywood, how many times have you had the Rosalie on the Heffernan Dry Dock during the five years you were there?

A. I should say that we have her between six and probably eight times.

Q. Did you ever replace the stem during that period?

A. Yes sir.

Q. You have replaced the stem. When?

A. Well now, it is about three years ago, in April, 1911, I believe.

Q. I mean prior to 1911. In the five years you never replaced the stem.

A. No.

Q. That is prior to 1911 we are talking about.

A. Yes.

Q. And during the repairs that you had made on that vessel when you had her on dry dock during the preceding five years, you never had replaced the stem.

A. No.

Q. Had you ever done any repairs to the stem?

A. That is asking something I cannot—in all probability we did—but I do not remember of any. Just minor repairs when a vessel goes on the dock, she is likely to have a little tinkering up all over.

Q. Did you ever have any repairs from a collision during that five years, to her bow?

A. Well, just the once.

Q. Prior to 1911, April, 1911?

A. No.

Q. She came down there for the annual overhauling and repainting didn't she?

A. When are you speaking of?

Q. Every year, practically?

A. Oh yes.

Q. And that occurred about April each year, did it not?

A. That of course would be determined by whether they could spare her at that time. They tried to get her around April each year as near as they could.

Q. Had you repainted the hull in April, 1911?

A. Just from the water line down.

Q. Are you sure about that?

A. Yes, most positively.

Q. You had her in September, 1910, didn't you?

A. I could not say whether we had or not.

Q. Don't you remember that her stern was injured, the propeller carried away in the summer of 1910, and that you had her on the dock and repaired her sometime during the summer or early fall of 1910?

A. No sir, I cannot recollect that.

Q. You do not have any recollection of that at all?

A. No.

Q. Do you remember putting in a spare iron propeller and holding over to her annual docking to put in a bronze propeller?

A. I cannot recollect that.

Q. Now on this occasion in 1911, you did put in a bronze propeller, didn't you?

A. I would not say that I did, because I do not remember.

Q. Whenever you made repairs a surveyor's report was given to you as the basis for the repairs?

A. Yes.

Q. And these surveys were made by Mr. Walker?

A. Yes sir.

Q. And usually had some one representing the Insurance men. Now I show you a report, an extended report of survey, of 8, 16 and July 27, 1910, and I will ask you to look at that and then state whether or not you recollect making the repairs called for by that survey?

A. No sir, I did not do that job.

Q. You were foreman?

A. No sir, I was not. That job was done in the Moran company yard. not the Heffernan.

Q. Heffernan did not do that job then?

A. No sir.

Q. Well now, I will ask you if you have any recollection of putting a propeller in when you repaired her in April, 1911, a new bronze propeller?

A. No sir, I do not recollect.

Q. Have no recollection of that at all?

A. No sir.

Q. You had the survey of Mr. Walker and Mr. Fowler, on which to make these repairs in 1911, didn't you?

A. Yes sir.

Q. I will ask you to examine the paper I now hand you,

being report of survey, accident of April 8th, 1911. I will ask you if that is the survey under which you made these repairs?

A. Yes sir.

Q. You observe in that report that the statement is made that a new bronze propeller be installed at this time per recommendations report of survey September 10, 1910. Now I ask you whether you recollect that you put in that new bronze propeller?

A. Well sir, I could not tell you, honestly; I do not know.

Q. You do not have any distinct recollection about this job anyway?

A. Yes. Most decidedly. You see my end of this is the wood work. The iron work and installation of the propeller comes under the machinists. He could put that propeller on and it would not impress me at all.

Q. Would he be doing it while you were at your work?

A. Yes. He would be at one end of the ship while I would be at the other.

Q. Well now, it appears from that that there was a report in September, 1910, requiring this work to be done, and I notice in the bills that have been furnished by the respondent in this case, this statement in the report at that time, the vessel was not due for ordinary docking, that is September, 1910—the vessel was not due for ordinary docking and painting, having been last painted in April, 1910, and would not have been painted again in the ordinary course again until April, 1911. Now I ask you if you remember whether you did repaint the vessel in April, 1911?

A. We repainted the vessel's hull from the water line on down.

Q. That would have to be done regardless of this collision?

A. If you haul a vessel out you have to paint her.

Q. You have to paint her annually anyhow, don't you?

A. No, we have not.

Q. Well, they do point her annually?

A. It is the practice, yes, but if you haul a vessel out at all you have to paint her.

Q. How many men did you have employed in doing this work, have you any recollection?

A. I should say we worked right on the ship probably thirty men, working on the hull; and twenty-five or thirty men working through the yard for the same job.

Q. What would they be doing in the yard if not working on the repair?

A. Work in connection with the repair.

Q. Yes but what would they be doing in the yard?

A. Working on the repairs at the forward end of the vessel.

Q. What repairs would be doing in the yard which they would not be doing on the ship?

A. Well, they would be hewing timbers. There would be a band sawyer sawing these timbers. There would be men getting them along, ligning them, hewing them and getting them ready to go in place. The blacksmith and helper would be getting out fastenings; another blacksmith and helper repairing the stem, and a bunch of helpers carrying the stuff aboard the vessel.

Q. Could you work 25 or 30 men on this vessel at a time?

A. Yes, easily.

Q. Did you?

A. Yes.

Q. Do you know anything about what men were working on this job in the yard?

A. I most certainly did.

Q. Did you keep in your office books, keep a record of the amount of time they put on each job?

A. Yes sir.

Q. Heffernan's book keeper kept the record of the number of men and the time they put in on each job?

A. Well now, that is a question. I would keep that for my own information.

Q. Have you got such a record as that?

A. Oh no.

Q. Has the Heffernan company such a record? It must have it must it not?

A. No.

Q. Why would it not have it?

A. Because they would not get it.

Q. Why not?

A. The time for the men would be turned in, so many men, so many days.

Q. You kept a regular daily record of that, didn't you?

A. I would for my own information.

Q. Well, but you gave it in, you kept it in a book, you are required to keep it?

A. Yes—

Q. That book would be preserved?

A. Each item, each time you supply a man you would not keep a note of it for his time.

Q. But you would charge for that work each particular

time on one particular job; you would keep the number of hours that a man worked on a particular job?

A. No sir.

Q. You did not do that?

A. No sir.

Q. How could you make up a bill if you did not?

A. For the simple reason there was no other work in the yard except the Rosalie, and the men in the yard were working on the Rosalie.

Q. Then you must have a record of the time each man worked?

A. Yes sir.

Q. Where is that record?

A. For all I know the Heffernan people have it.

MR. HUGHES: I would like to have that produced.

Q. How many days was she in dock?

A. I do not remember just how many days she was; she should have been about four days in the dock.

Q. What did you do with this stem iron?

A. We took the stem iron off. It was broken in two different places. We took it off and tried to weld it, and we could not get it thickened up the broken parts sufficiently, and we made a new stem for her.

Q. Is there any difficulty about welding ordinary wrought iron? This was wrought iron stem was it not?

A. This was wrought iron.

Q. Any difficulty in welding ordinary wrought iron?

A. Well, the thing is this, that that iron had been submerged so long and the action of the salt water, it would not weld.

Q. The iron then was crystalized and old and needed new iron didn't it?

A. It would not need new iron except it was broken.

Q. You say that the 256 feet of fir 8x24 16 feet long was used for the stem?

A. No, the apron piece.

Q. For the apron piece.

A. Yes sir.

Q. The apron is in front of the stem?

A. Behind the stem.

Q. Behind the stem.

A. Yes sir.

Q. Was the apron broken?

A. Yes sir.

Q. How long had it been since the apron had been replaced? How long had that apron been in there?

A. I could not tell you that.

Q. As far as you know it had been in since the ship was built?

A. As far as I know.

Q. What is the ordinary life of such an apron?

A. Until it gets broken.

Q. Well, they decay, don't they?

A. They decay, certainly. It would last probably 25 or 30 years.

Q. It will not last ordinarily over 12 or 15 years?

A. Yes.

Q. Do you know how old the Rosalie is?

A. Well, I should judge she is about—

Q. About 25 years old, is she?

A. I could not tell you.

Q. The item of 1422 feet of fir 3x12 20 feet long, where did that go?

A. That 3x12 would be her planking.

Q. The item of 2031 feet 3x12 30 feet long, what would that be?

A. Planking.

Q. The planks were not 20 to 30 feet long?

A. Some, I should judge, would be more than that.

Q. They are all different lengths?

A. Yes sir.

Q. They cross each other?

A. Yes sir.

Q. You took plank out on each side?

A. On the starboard side.

Q. Was the original planking on that originally 20 or 30 feet long?

A. Yes sir.

Q. 84 feet of fir 6x12 14 feet long. What was that for?

A. 6x12. That would be for main deck beams.

Q. Where did that go in?

A. The main deck runs right forward and butts against the apron piece.

Q. How far back on the apron would these beams go?

A. Well, you would have one beam right close up against it.

Q. That would not be very long.

A. No, but as you go further back they would get longer.

Q. How many of them?

A. Well, I should say there would be three or four beams.

Q. Do you have any recollection of how much of the vessel, the bottom and sides, you put yellow metal on?

A. There was some of the yellow metal broken on the port side and the stem. The yellow metal goes over the plank and on to the stem. On the port side that would require one strip, vertical, of yellow metal on the port side. On the starboard side all the plank that was stripped off we had to tear off the yellow metal to get it off. That would be over forty aft of the stem on the starboard side.

Q. You were instructed to replace the metal injured. But none of it was injured except about the stem?

A. It is impossible to take it off without injuring it.

Q. Did you replace any of it?

A. No sir, .

Q. What did you do with it?

A. We turned it in there and threw it over the wharf.

Q. Threw it in the bay, did you?

A. Yes, dumped it in the bay.

Redirect Examination:

Q. (Mr. Robinson). Mr. Hollywood, in planking a ship, do you have to shape the planks, cut them down in any way?

A. Yes.

Q. What I am trying to get at is this: Suppose you had a plank 12 inches wide and 20 feet long, would that cover that much surface of the ship?

A. No sir, it would not; in some cases it would not cover the width of it; you might get a plank three inches wide or four inches wide out of that plank for the new plank.

Q. What is the cause of that?

A. The spanning of the vessel.

Q. Especially around the bow.

A. Yes.

Q. Now this stem iron. How much of an affair is that. Is that in two or three pieces?

A. The stem iron should be made and is generally made in one piece. And at the top it would probably be three by four and as it goes down it widens out until it gets to where it would be one inch by eight. It would be 35 to 36 feet long.

Q. Is there much blacksmithing work in repairing one of these?

A. Yes. It is not blacksmith work alone, but you have to make a wooden templet the shape of the vessel's stem, and the blacksmith works to this templet.

Q. (Mr. Hughes). Was there any different work done from that called for in the report of survey?

A. No sir, not that I know of.

Q. No other damages were found except those pointed out by the survey?

A. Well, when the survey was made first, it was impossible for the surveyors to see the interior damage, because the vessel at that time was not opened up.

Q. Well, they made a full survey for you to work on before you did the work?

A. Yes sir, as far as it could be seen.

(Witness excused).

FRANK WALKER, a witness called on behalf of the libelant, being duly sworn, testified as follows:

Q. (Mr. Robinson). What is your business, Mr. Walker?

A. Marine surveyor and Naval Architect.

Q. You have been in that business on the sound here since 1893, I believe, or sometime thereabout?

A. No, not quite as long as that. 1896 I think I came here, I cannot recollect exactly.

Q. Now you remember the *Rosalie* was injured in a collision in April, 1911, I think it was, Mr. Walker?

A. Well, I remember of a collision to the *Rosalie*. I cannot say the date, but I made a survey of it.

Q. I show you Claimant's exhibit No. 7, Mr. Walker, and ask you if you remember making that survey there?

A. Yes sir, I have a recollection of that survey now. I drew it up.

Q. Who was with you?

A. Mr. Fowler.

Q. Who was Mr. Fowler?

A. He was Lloyd's Register surveyor, representing the underwriters.

Q. Who were you representing as surveyor?

A. I represented the owners.

Q. The owners of the *Rosalie*?

A. The owners of the *Rosalie*.

Q. What is the practice when you send a boat to be repaired. Mr. Walker, do you give them a notice of what is to be done?

A. Yes, I make a survey. I generally take my notes at the time, and then I write them out, and generally, of course, I did not go into detail as to how many inch screws or bolts, but would say replace this or renew that and everything that comes in with it.

Q. But the directions you gave the people on the ship are substantially the recommendations in that survey?

A. Practically the same thing. I did not draw the survey

up until afterwards. I may have written that out on their order form for the work to be done.

Q. I show you libellant's exhibit "B", which purports to be a bill of the Heffernan Dry Dock company. Look over that bill and see if you can recollect at this late date what you directed to be done, substantially?

MR. HUGHES: I object to this because it is not composed of the written directions made by Mr. Walker. The written directions should be produced here, what he required to have done. This bill was not made by him?

A. Of course a good many times I give instructions verbally but as far as I can see this bill is for the same work that is recommended in that survey report.

Q. Mr. Walker, as representing the owners in the case of this kind, do you look after the repairs in any way, oversee them during their progress or anything of that sort?

A. I always attended the repairs. I do not stay there from morning until night on the repairs; sometimes I go down twice a day to see what is doing, or if anything freshly develops, anything of that description. I generally attend the repairs daily.

Q. Have you a recollection at this time whether you did that in this case?

A. Yes sir, I do it in all cases after I sign a survey report of that description.

Q. Was it part of your responsibility to the owners to look over the bill that is rendered, or do you do that?

A. Yes sir.

Q. Do you remember whether or not you examined this bill?

A. Yes sir, I examined the bills in this case in the same manner that I examined all the others, and I approved the bills for payment.

Q. That is approved them to your principal, the owner, the Inland Navigation company in this case?

A. Yes sir.

Q. Do you know what the practice of the Underwriters, do they go over the bills?

A. Yes, all Underwriters claims are approved by the Underwriters' surveyor and owners' surveyor.

Q. Do you remember whether that bill was approved by Mr. James Fowler and yourself?

A. Yes, that bill was approved by Fowler and myself.

Q. Mr. Walker you survey vessels here for repair from time to time. Now do you think the bill of the Heffernan Dry Dock company, in your hand there, showing the total,

do you consider that this is a reasonable bill for that work?

A. When that bill was presented for my approval and the Underwriters approval, we considered the bill reasonable for the work done, or we should not have approved it; and it was paid on our approval.

Q. Was that work necessitated by that collision?

A. Yes, all of this work called for in this survey report was necessitated by that collision.

Q. What about this proposition of painting, Mr. Walker. It has been testified here that it was necessary to repaint the vessel's bottom when taken out on the dry dock on account of deterioration.

A. The paint perishes.

Q. When it gets air?

A. Yes. The Underwriters always pay for the painting in these cases simply because the paint perishes after it is exposed to the air for a matter of 12 or 24 hours.

Cross Examination:

Q. (Mr. Hughes). This ship is annually repainted, is she not?

A. That is the usual custom, but I think this ship had been previously painted three or four months before.

Q. Now you surveyed her:

A. September.

Q. Of the previous year?

A. Yes. I think she was painted at that time, if I recollect.

Q. You examined the bills of Moran Brothers who did the work at that time, didn't you?

A. Yes sir.

Q. I show you a copy of the bill furnished by respondent to me and ask you to note the note contained in that bill, which reads as follows: The vessel was not due for ordinary docking and painting, having been last painted in April, 1910, and would not have been painted again in the ordinary course until 1911.

A. That is a note the adjusters put in, and owing to that note the Underwriters would be compelled to paint at that time?

Q. As a matter of fact she was not painted and this bill does not so show?

A. She was painted. The whole hull was washed. Docked and the vessel was cleaned and painted as directed. She was painted in September and therefore would not be due for another coat of paint until the following September.

And the reason that note was put in was to explain to the Underwriters that the vessel was not due for painting although she was painted in September.

Q. That is nothing but the hull of the vessel?

A. Yes, all this is painted, the bottom and the under portion.

Q. Mr. Walker, you say you O. K.'d this bill of the Heffernan Dry Dock company?

A. I approved it, yes.

Q. How did you approve it, right on the bill, put your O. K. right on the bill?

A. I think I approved it by my stamp on the bill.

Q. That was the bill then that was paid?

A. That was the bill that was used at the time for making up the adjustment of these bills that go to the Underwriters; this is only a copy of the bill here.

Q. You O. K.'d that in duplicate?

A. Oh no, I did not, only the original one.

Q. The Inland Navigation company has to keep its own vouchers don't it?

A. They paid by voucher, and they did not care anything about the bill. I approved the bill that is presented to the Underwriters the same as the Underwriters surveyor, we approved the bill together.

Q. You did that in duplicate?

A. No, I do that with just one bill that is going to be presented for adjustment.

Q. Did not the company keep a duplicate of the bills?

A. They pay the bill after they know that we approve it, they pay it by voucher and check; they do not have that exact bill receipted.

Q. Do you know where these bills are that you approved?

A. They may be among the Underwriters papers in San Francisco or London. They go forward to the Underwriters with the adjustment, the approved bills.

Q. These bills could be easily obtained to show exactly what you approved. You cannot tell by looking at some other paper three years afterwards whether they are the same you approved or not, can you?

A. I know this bill in this case was entered in that adjustment. I have been over that adjustment personally at the time it was drawn up.

Q. Was there a propeller put in at this time, a bronze propeller?

A. There was a new propeller recommended owing to an accident to the propeller in September, sometime in

September, 1910. Then the vessel in ordinary course would have gone on the following September had not she had that accident, then advantage was taken of her being on the dock to install the propeller.

Q. You mean in April?

A. Yes.

Q. You put in a temporary propeller?

A. Spare propeller; all vessels keep a spare propeller.

Q. Not a bronze propeller that?

A. I do not remember.

Q. I think the papers show it was not.

A. I did not say a new bronze propeller; they generally keep in store a cast iron one as a spare.

Q. That was installed in September temporarily because there was no new bronze propeller at hand?

A. They did not have a new bronze one at hand so they put on a cast iron one.

Q. What became of that bill for that bronze propeller? Who got that? That is not on this bill?

A. The Moran people made the bill in that adjustment for that propeller, or in an adjustment.

Q. Who paid for the bronze propeller?

A. The Underwriters paid for it. You will find the bill for the propeller somewhere. (Examining papers). Here is the bill, \$932.40.

Q. Who installed this propeller at the time it was installed?

A. That propeller was shifted down to Heffernan's Dry Dock and installed by Heffernan's machinists.

Q. Moran Brothers furnished it?

A. Moran Brothers furnished it.

Q. And it was installed by Heffernan's machinists?

A. Yes sir.

Q. What became of the bill for installing it?

A. There would be another bill somewhere for that.

Q. That would be by Heffernan?

A. That would be by Heffernan.

Q. That is what I want to see. I have never been able to find it. Does the whole bill come from the Moran company for the Heffernan work?

A. Now the vessel might have been on the dock and no chance to put it on; it is no job to put a propeller on. Just put it on and screw it up. There might be no bill for it. If I remember right, I think the Port Engineer and his assistant put it on. Here is the engineer's bill that is allowed for that purpose, I think.

Q. Then you charged it to us, the cost of putting in the propeller that was knocked off by accident the previous summer?

A. No, they did not charge anything for it.

Q. You have it right in the bill here, chief engineer, 8 days and assistant four days?

A. It is not allowed here.

Q. But it is put in our bill?

MR. ROBINSON: No, it is not there.

A. No, machinists and engineers. Charged only carpenters and blacksmiths, these were charged in this bill in another adjustment that will be shown where charged to the Underwriters. The crew installed the propeller.

Q. It is said in this bill, purports to be a Moran company bill, but is you say in reality the Heffernan bill?

A. This was not due for ordinary docking, having been last docked for repairs and painted in September, 1910.

Q. Then it says further, according to survey report of April 8th, 1911: New bronze propeller was installed at this time, as if this work did not affect the seaworthiness of the vessel; the whole of this docking is charged to this accident of April 8th?

A. This is for taking a propeller off and putting another on, that don't mean anything at all. The vessel was there on the dock all the time when they were making the repairs, and it is a very common occurrence for ships to change propellers, the crew to change propellers.

Q. Do you know whether they did in this instance?

A. I believe they did, otherwise there would be a bill for it. They never miss a chance to make a bill, you know.

Q. Do you know whether they kept a record of the time they devoted to the work done at the Heffernan Dry Dock company?

A. I have no idea what records the Heffernan people kept.

Q. You know that is the practice to keep a record of the amount of hours that each man devotes to a particular job?

A. Well, they keep a record at the time, Mr. Hughes. I don't know how long they keep that record. It is not necessary after the bills are made out, I should think; they would soon fill the office with time sheets if they did.

Q. Well, they have books?

A. That bill is copied into one of their own bill books and that is the record they keep. They could give you a copy of that.

Q. How old is the Rosalie?

A. I don't know, I am sure.

Q. You knew practically, don't you?

A. No. She was built in San Francisco some twenty years ago.

Q. More than twenty years?

A. I don't know. I was not around here then.

Q. Who is Mr. Bishop?

A. He was Port engineer.

Q. What was he doing in 1911?

A. He had been Port engineer for years.

Q. For the Inland Navigation company?

A. Yes sir.

Q. He is still with them, is he?

A. He is still with them? He looked out for the upkeep of the boat.

(Witness excused).

Hearing adjourned.

UNITED STATES OF AMERICA,
WESTERN DISTRICT OF WASHINGTON, } ss.
NORTHERN DIVISION. }

I, A. C. Bowman, a Commissioner of the United States District Court for the Western District of Washington, residing at Seattle, in said District, do hereby certify that the foregoing transcript from page one to page 243, both inclusive, contains all of the testimony offered by the parties to said cause.

The several witnesses, before examination, were duly sworn by me to tell the truth, the whole truth and nothing but the truth.

I reduced the testimony to writing in shorthand and thereafter caused the same to be typewritten, and I certify that said testimony is the testimony given by the said witnesses on the dates indicated in the transcript.

Proctors for the parties waived the reading and signing of the testimony given by the witnesses, agreeing that the same should have the same force and effect as if so read and signed by them.

The exhibits offered as shown in the testimony and the index are returned herewith.

I further testify that I am not of counsel nor in any way interested in the result of this suit.

WITNESS my hand and official seal this 18th day of August, 1914.

[SEAL]

A. C. BOWMAN,
U. S. Commissioner.

COMMISSIONER'S TAXABLE COSTS:

Libelant,

Hearings March 25, June 6, 1913, July 3, 1914.....\$ 9.00

Administering oaths to 11 witnesses.....	1.10
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Marking and filing 3 exhibits..... .30

Transcribing above hearings 381 folios at 10c..... 38.10

\$48.50

Claimant,

Hearings Sept. 5, 1914, Jan. 13, Feb. 1, July 3-14....\$12.00

Administering oaths to 12 witnesses.....	1.20
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Marking and filing 6 exhibits.....	.60
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Transcribing above hearings 303 folios at 10c..... 30.30

\$44.10

(ENDORSED)

Filed in the U. S. District Court, Western Dist. of Wash-
ington, Northern Division, Aug. 18, 1914.

FRANK L. CROSBY, *Clerk.*

By E. M. L., *Deputy*.

In the District Court of the United States for the Western
District of Washington, Northern Division.

THE INLAND NAVIGATION COMPANY, A CORPORATION, }
Libelant, }

vs.

THE TOW BOAT "TILlicum", HER ENGINES, BOILERS, etc.,
Respondent,

etc.,	Respondent,
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STIMSON MILL COMPANY, A CORPORATION,
Claimant and Cross-Libellant.

Motion for Leave to Take Further Testimony.

Comes now claimant of the tug "Tillicum" and moves the Court to re-refer this cause to A. C. Bowman as Commissioner, for the purpose of taking further testimony respecting the performance of the duty to maintain a proper lookout on the part of the tug "Tillicum", and as grounds for this motion respectfully shows the Court:

That the libellant in its libel makes no charge that the tug "Tillicum" was at fault for failing to maintain a proper lookout at and prior to the time of the collision complained of. That since said cause has been reported back to the Court the proctors for libellant, in presenting their brief,

for the first time make the contention that the said tug "Tillicum" was negligent in the particular aforesaid, basing such contention on an incidental statement of the master of said tug. That by reason of said contention being now made it becomes material to introduce such additional proof, which can be speedily taken without any unnecessary delay in the final hearing of this cause.

HUGHES, McMICKEN, DOVELL & RAMSEY,
Proctors for Claimant.

Copy of within motion received, and due service of same acknowledged this 31st day of August, 1914.

BRONSON & ROBINSON,
Proctors for Libelant.

Endorsed: Motion of Claimant for Leave to Take Further Testimony. Filed in the U. S. District Court, Western Dist. of Washington, Northern Division. Sep. 2, 1914. Frank L. Crosby, Clerk. By E. M. L., Deputy.

In the District Court of the United States for the Western
District of Washington, Northern Division.

THE INLAND NAVIGATION COMPANY, A CORPORATION,	} Libelant,	} No. 4730
<i>vs.</i>		
THE TOW BOAT "TILlicum", HER ENGINES, BOILERS,	} Respondent,	
etc.,		
STIMSON MILL COMPANY, A CORPORATION,		
Claimant and Cross-Libelant.		

Order Granting Motion for Leave to Take Further Testimony.

This matter coming regularly on for hearing, on the motion of the claimant for an order of this Court re-referring this cause to A. C. Bowman, as Commissioner, for the purpose of taking further testimony respecting the performance of the duty to maintain a proper lookout on the part of the tug "Tillicum", and it appearing to the Court that good cause exists for the granting of said motion,

It is hereby ORDERED that this cause be and hereby is re-referred to A. C. Bowman as a commissioner for the taking of further testimony respecting the performance of the duty to maintain a proper lookout on the part of the tug "Tillicum", with directions to said Commissioner to take

said testimony and return the same to this Court within ten days.

Done in open court this 8 day of September, A. D. 1914.

JEREMIAH NETERER, *Judge.*

Endorsed: Order Granting Motion for Leave to Take Further Testimony. Filed in the U. S. District Court, Western Dist. of Washington, Northern Division. Sep. 8, 1914. Frank L. Crosby, Clerk. By S. E. Leitch, Deputy.

In the District Court of the United States for the Western District of Washington, Northern Division.

INLAND NAVIGATION COMPANY, A CORPORATION,	Libellant,	} No. 4730
<i>vs.</i>		
THE TUG "TILlicum," ETC.,	Respondent,	
STIMSON MILL COMPANY, A CORPORATION,	Claimant.	

To the Honorable Judges of the above entitled Court:

Pursuant to the order of reference referring this cause for the taking of further testimony, on this 10th day of September, 1914, the libellant appeared by Mr. Robinson, of Bronson & Robinson, its proctors, and the Claimant appeared by Mr. Hughes, of Hughes, McMicken, Dovell & Ramsey, its proctors; thereupon the following proceedings were had and testimony offered:

Claimant's Testimony.

E. N. CHARLESWORTH, recalled, on behalf of the Claimant, testified as follows:

Q. (Mr. Hughes). Captain, referring to the occasion of the collision between the Tillicum and the Rosalie on the morning of the 8th of April, 1911, who was on duty or watch navigating the Tillicum that morning?

A. A. W. Anderson.

Q. Was he a licensed pilot for these waters?

A. Mate and pilot, yes sir; at the time he was master and pilot.

Q. But he was acting as pilot?

A. Yes sir.

Q. And you had a master's license and pilot's license also?

A. Yes sir.

Q. Now you have testified that you were in the pilot house. Why were you there?

A. To keep a lookout.

Q. The general rules and regulations prescribed by the Board of Supervising Inspectors, rule 38, requires steamers navigating as this was at that time, dark, to have some one in addition to the pilot on watch, some other member of the crew of the boat also, on watch, in or near the pilothouse. Why did you have no one else beside yourself?

A. Because I would not trust anybody else but myself. I wanted to be there myself and see what was going on, to keep a good lookout.

Q. Was that the sole reason why you were in the pilot house?

A. Yes sir.

Q. Let me ask you whether one could perform the duties of lookout on the bow of that boat or on the bow of the barge, as well as he could in the pilot house or up in front of it?

A. You can keep a better lookout from the wheelhouse.

Q. When I say pilot house I mean wheel house.

A. Yes.

Q. What do you say as to whether you could see an approaching vessel in the dark and the fog better from that point than you could down on the bow of the tug or barge?

A. You could see better from the pilot house, because you are up higher.

Q. Let me ask you whether you could hear as well up there?

A. Yes, hear better from the pilot house.

Q. Any noise in the pilot house to interfere with your hearing?

A. No sir.

Q. Anything to interfere with your seeing?

A. No sir.

Q. Was there a greater noise on the bow of the tug or on the bow of the barge?

A. There is a little swash from the bow of the barge.

Q. From the waters, you mean?

A. Yes sir.

Cross Examination:

Q. (Mr. Robinson). Captain, do I get a correct understanding of your former testimony that you were blowing fog signals yourself and handling the whistle cord that morning? Were you or were you not?

A. It has been so long ago I hardly remember. I remember giving a fog whistle and a danger whistle, and the reverse, backing up signal, the bell.

Q. When you heard the echo, you got an echo at one time from the whistle ahead of you which was the first intimation that you had that there was something ahead of you, as I recollect your testimony?

A. Yes sir.

Q. Do you remember now whether you blew the whistle that you got that echo from?

A. I cannot hardly remember, it has been a long time ago.

Q. Captain, as I recollect your testimony given before, that before the collision happened you had been going for some little time with a slow bell, trying to get echos from the bluff. Were you blowing these whistles yourself do you remember, to get that echo?

A. No sir, the pilot.

Q. Did you and Anderson, the pilot, confer at any time about that echo there, talk about it, when you were in the pilot house?

A. No sir.

Q. Did you have any conversation with Mr. Anderson at all going up along the water front, do you remember?

A. No sir.

Q. Do I understand you to mean that you did not have any conversation or that you do not remember it?

A. I just asked him what he was steering, that is all. It was no conversation; I asked what course he was on.

Q. In case of any emergency captain, of any kind, occurring, when you were going along there with Mr. Anderson, you would exercise your functions as captain of the vessel, would you not, you would take charge, would you not, if anything turned up?

A. Yes sir.

Q. You did, as a matter of fact, didn't you, as soon as you got wind of another vessel in the vicinity?

A. Yes sir. As soon as I took charge Mr. Anderson kept the lookout.

Q. And the wheel?

A. I took charge of the wheel then.

Q. Was Anderson at the wheel all the time?

A. Yes sir.

Q. During that whole trip?

A. No sir.

Q. I mean from the time you left the dock until the collision?

A. Yes sir.

Q. Captain, can you tell offhand, about how far the house

is on that tug, that is from the front of the pilot house to the rear wall, do you know or would you have to guess at it?

A. I would have to guess at it.

Q. How much do you think?

A. It would not be over twenty or twenty-five feet at the least, the pilot house is very close to the bow.

Q. You mean that the house is twenty-five feet long?

A. No, from the bow.

Q. The house is twenty-five feet from the bow.

A. I judge that, looking right straight down like that. You see there is room enough for a man to walk in between the towing post and the front of the house, and then comes the anchor and the gear on the bow.

Q. How far is it from the pilot house windows to the bow?

A. Not any more than twenty-five feet; that is a rough guess, you know I never measured it.

Q. The deck rises as it goes toward the bow on the Tillicum, does it not?

A. That is according to how she is loaded; if she is empty of fuel forward, she will come up with the bow. The Tillicum is mostly on an even keel when loaded; she was loaded heavily at that time.

Q. Would not the deck be higher at the bow on this occasion than the deck would be right at the end of the pilot house? You understand what I mean?

A. Not exactly.

Q. What I mean is this: Would not there be a slope from the bow to the pilot house, a sloping of the deck?

A. She has bulwarks, you know, about two feet high.

Q. If a man was standing right in her bow on the deck, would not his standing place be more elevated than if a man was standing on the deck back at the pilot house, right in front of the pilot house? What I mean is has she got a straight deck along there?

A. Yes sir.

Q. It is straight.

A. Yes, kind of.

Q. There is a kind of a slope to it, is there not?

A. Depending on how the vessel is loaded.

Q. How high is the floor of the pilot house above the deck on the outside?

A. I could not tell you.

Q. Cannot you give an estimate? Is it a great distance? How many steps have you got up there?

A. Six steps from the lower deck and two, that is eight;

it would be all of 15 feet from the deck to the pilot house.

Q. Would the pilot house floor be 15 feet higher than the deck at the bow?

A. Yes sir.

Q. Then, as I recollect it the barge projected beyond the bow of the tug about thirty feet. If a man was out on the bow of that then he would be forty or fifty feet from the pilot house, would he not. It is thirty feet from the bow of the barge to the bow of the tug?

A. The scow was a hundred feet, and she was no more than 12 feet past the bow at that time, she was pretty well back; it would be about 12 feet past the bow on the port side.

Q. Well then, it is about 25 feet back to the pilot house; under your present testimony it would be about 37 feet.

A. Somewhere around there, yes.

Q. Captain, if a man was out on the bow of that scow, that would give him say thirty-seven feet further ahead, and could he not see just that much further into the fog than a man in the pilot house?

A. I don't think so.

Q. Why not?

A. Because he was down low.

Q. How much lower would he be?

A. He would be about the same as he would be at the bow of the boat, about 15 feet below the wheel house.

Q. But that would depend on the character of the fog, whether it was a low lying fog?

A. I think a man in the wheel house could see better than a man on the end of the scow, in my judgment; and practically it is not a safe place out on the end of the scow.

Q. Captain, you would not hear much ripple of the water around the scow when you were traveling three knots an hour, would you?

A. Yes, you could hear the wake of the scow going into that, the headway of the scow.

Q. Where are the engines of the tug with reference to the pilot house?

A. They are below decks.

Q. Are they right immediately behind the pilot house?

A. No sir, well aft.

Q. How far aft?

A. I could not say how far aft.

Redirect Examination:

Q. (Mr. Hughes). Captain, when you spoke of the distance from the pilot house down to the bow, you mean the diagonal distance?

A. Right straight down that way, I should judge, I never measured it.

Q. From the deck, starting from the deck immediately in front of the pilot house, about what distance is it to the bow there on the deck, the deck space in front of the pilot house, you testified before it was 12 feet?

A. It is just about 12 feet, somewhere around that. I haven't any idea, about 12 or 14 feet.

Q. (Mr. Robinson). How far is it from the back end of the house, the back wall to the stern of the tug?

A. I could not answer that question. I never measured it. It is pretty hard to tell, you know, for I never measured it, I would have to guess.

Q. What do you think?

A. I have no idea.

(Witness excused).

A. W. ANDERSON, recalled, testified on behalf of the claimant as follows:

Q. (Mr. Hughes). Did you have a pilot's license at the time you were acting in the capacity of mate on the *Tillicum* on the 8th of April, 1911?

A. Yes sir.

Q. Was it your watch on duty?

A. Yes sir.

Q. Navigating that ship as pilot all the time from the time she left the dock at Seattle until just before the collision?

A. Yes sir.

Q. Was it your watch?

A. Yes sir.

Q. Who acted as lookout?

A. Captain Charlesworth.

Q. Is that the usual custom?

MR. ROBINSON: I object to the proof of any custom on the ground that it is incompetent, irrelevant and immaterial.

A. Yes sir.

Q. I will ask you if that is the practice here, in pursuance of rule 38 of the General Rules and Regulations prescribed by the Board of Supervising Inspectors—I call your attention to that rule.

A. Yes sir.

MR. ROBINSON: I object to this testimony also on the ground that it is incompetent, irrelevant and immaterial.

Q. Captain, what is the best place on that tug for the lookout at night time in a fog?

A. In or in front of the pilot house.

Q. Could a lookout have performed the services as well at the bow of the tug or on the front of the barge?

A. No sir.

Q. Captain Anderson, I notice that counsel makes a certain contention in regard to your testimony which was given before, which prompts me to ask you a question or two in order that you may explain. You testified before that you heard an echo from the *Rosalie*, an echo from your own whistle, didn't you?

A. Yes sir.

Q. Now in answer to the question which was propounded to you whether your boat slowed down, you said yes. I want you now to state what signal was given when that echo was heard in front of you?

MR. ROBINSON: I object to this line of testimony because it is not germane to the purposes for which the Court reopened the case.

A. Slow bell, slow down.

Q. Well, how was that.

A. That was a stop just before that.

Q. That signified the doing of what?

A. Stopping the engine.

Q. I assume that the boat does not stop when the engine is stopped, simply gradually diminishes speed?

A. Yes sir.

(Witness excused).

R. A. TURNER, a witness called on behalf of the claimant, being duly sworn, testified as follows:

Q. (Mr. Hughes). What position do you hold?

A. Local Inspector of boilers; steamboat inspector.

Q. You act in conjunction with captain Whitney, Inspector of Hulls, as a board of Local Inspectors, do you?

A. Yes sir.

Q. You know the tug *Tillicum*?

A. Yes, I do.

Q. She is an enrolled and licensed tug, is she?

A. Yes sir.

Q. What rule governs these tugs or vessels of that kind operating in the night or darkness or in a dense fog?

A. What rule governs? In what respect?

Q. As to the keeping of a lookout, where and what lookout should be kept? Can you call attention to the rule?

A. Why, all passenger and ferry vessels operating in the night time, as I remember the rule, shall have a lookout—not

a lookout, you can call him a lookout I guess—in or near the pilot house in addition to the pilot.

Q. I call your attention to rule 38 and ask you if that is the rule?

A. Well, I did not get that exactly right. I said lookout. It says "one of the crew," the same thing.

Q. Rule 38 is the rule?

A. Yes.

Q. Now is that the only rule governing in these local waters with respect to licensed and enrolled vessels operated by steam?

A. As to the watch on deck?

Q. Yes sir.

A. That is the only rule I know anything about.

Q. Is that the only rule that is applied by your local board?

A. To inland vessels, that is the deck watch.

Q. That is what I mean, the lookout. I want to read this in evidence "All passenger and ferry steamers shall, in addition to the regular pilot on watch, have one of the crew also on watch, in or near the pilot house; and this rule applies to all steamers navigating in the night time."

A. That is the rule we go by.

Q. Do you know Mr. Anderson here, this gentleman?

A. I have seen him before.

Q. He is a licensed pilot in this district?

A. He may be, I do not know.

Q. Where the pilot is on watch, by that I mean navigating the vessel in the pilot house, what is the rule by you Inspectors as to whether if the master acts as lookout, it is a compliance with rule 38?

A. Why I should say yes.

Q. You always act upon that rule in the administration of your duties as a local board?

A. We would consider the master as good a lookout as there was aboard a vessel, perhaps better.

Q. You know the tug *Tillicum*, you say?

A. I do.

Q. The pilot house of the tug *Tillicum*, what do you say as to whether that is a proper or the best place on the boat for a lookout to be stationed?

A. Well, I should think that would be the best place for him. I should think he could see more there than he could even if he was on the bow. As I remember the *Tillicum* the pilot house is a short distance away from the bow, and a man being higher he could see better.

Q. If she was towing a barge by her side, one of these

square front barges, what would you say as to whether the pilot house would be a more suitable place for a lookout than the bow of the barge in a fog?

MR. ROBINSON: I would suggest that you add to your question how far the barge projected.

Q. Assuming that the barge projected anywhere from 12 to 25 feet or 30 feet in front?

MR. ROBINSON: And add that there were large oil tank cars on the deck of the barge.

Q. Yes.

A. Well, there might possible be some place on that barge where he could see further ahead than he could in the pilot house, providing the barge projected ahead of the boat. But now I do not know the conditions in regard to that. We had the case before us but I do not remember much about it.

Q. You had that case before you. Did you find any fault on account of not having a proper lookout on that occasion?

MR. ROBINSON: I object as immaterial.

A. I do not bring it to mind that we did. Our decision in the matter is on record, but I don't bring it to mind. In fact I had forgotten all about the case, almost.

Q. In a fog a lofty position is a better place to hear is it not, as well as to see, ordinarily?

A. Well now—

Q. To see the lights of a vessel ahead or hear fog whistles of a vessel ahead?

A. I myself never spent any time in the pilot house of a vessel; I would not like to say.

Cross Examination:

Q. (Mr. Robinson). These rules, captain, to which you are testifying, are the rules made by whom?

A. The Board of Supervising Inspectors.

Q. As I understand these rules have the force of law, when they are not contrary to any actual law on the subject?

A. These rules are all taken and founded on the United States Statutes. Each one of them will refer you to the statute from which they are taken, the authority they are taken from.

(Witness excused).

L. E. SMITH, a witness called on behalf of the claimant, being duly sworn, testified as follows:

Q. (Mr. Hughes). Are you a licensed master and pilot on the waters of Puget Sound?

A. Yes sir.

Q. How long have you been?

A. Master and pilot about six years and a half.

Q. You have acted in that capacity on tug boats in the waters of Puget Sound?

A. Yes sir.

Q. Are you acquainted with the Tillicum?

A. Yes sir, I have been on her.

Q. Assuming that the Tillicum was towing a barge on her port bow, the Tillicum being 87 feet long and the barge towed being 100 feet long and extending out from 12 to 30 feet forward of the bow of the Tillicum, and the barge being barge number 8, are you acquainted with that barge?

A. Yes sir.

Q. Knowing the character then of the barge, the barge having a couple of tank cars on board, what would you say would be the proper place for the lookout to be stationed in a fog and when it was dark?

A. Well, I should say the pilot house of the tug or right on deck.

Q. The pilot house or immediately in front, there is a little space in front of the pilot house?

A. Yes sir.

Q. Is it the custom for a master in operating these tugs under these circumstances, to act as his own lookout, when his pilot is on watch?

A. It has been in all that I have been in.

MR. ROBINSON: I object as incompetent, irrelevant and immaterial.

Q. Do you know why that is done.

A. Well, in my case, I don't feel like trusting anybody else. I think I am better myself at it.

Cross Examination:

Q. (Mr. Robinson). When you do that, captain, do you regard yourself as still being in command of the boat?

A. Yes sir.

(Witness excused).

J. C. ACKLES, a witness called on behalf of the claimant, being duly sworn, testified as follows:

Q. (Mr. Hughes). Are you a licensed master and pilot on Puget Sound?

A. Pilot.

Q. Do you operate as pilot on tug boats on Puget Sound?

A. Yes sir.

Q. Are you acquainted with the Tillicum?

A. Yes sir.

Q. What is the proper place on the Tillicum for a lookout to be stationed in a fog?

A. In all vessels of her length on the bridge deck forward of the wheel house or in the wheel house with open windows.

Q. Are you acquainted with barge No. 8?

A. I have seen her.

Q. Suppose the Tillicum was towing that barge lashed to her port side, the Tillicum being 87 feet long and the barge 100 feet long, and the barge extending in front anywhere from 12 to 30 feet and was loaded with two oil tank cars, where would you say the lookout should be station in a fog, for the purpose of keeping the best lookout for the safety of the vessel, the lookout on the forward side of the house or in the wheel house?

A. On the forward side of it or in it.

Cross Examination:

Q. (Mr. Robinson). If a man was in front of the wheel house would he be standing on the deck or on the bridge deck?

A. She has a bridge deck.

Q. How high is that?

A. The bridge deck itself is about 12 or 14 feet above the water.

Q. How high above the main deck?

A. I should judge about nine feet.

(Witness excused).

MR. HUGHES: I want to call one additional witness, a fireman, whom I was unable to get at the time of the taking of the former testimony; he was not where I could locate him.

I. H. BIGGS, a witness called on behalf of the claimant, being duly sworn, testified as follows:

Q. (Mr. Hughes). Were you fireman on the tug Tillicum on the morning of the 8th of April, 1911, when she came in collision with the Rosalie?

A. Yes sir.

Q. Were you on duty that morning?

A. Yes sir.

Q. Did you note whether the Tillicum was blowing her fog signals regularly?

MR. ROBINSON: I object to this testimony as not being germane to the purpose for which this case was re-opened.

A. She was.

Q. Do you recollect whether or not the tug slowed down as she passed approaching Four mile rock?

A. I could not state the position exactly where she was

when she slowed down, but she was running slow for quite a while. I would not say how slow; I did not pay much attention to it.

Q. After she had been running slow for a time did you hear a signal to stop the engines?

A. Yes sir.

Q. Did the engines stop?

A. The engines stopped.

Q. Where were you?

A. At that time I was standing up on what they call the working deck of the engine room, that is on the main deck practically, looking out of the starboard door.

Q. Had you heard a fog signal from her just before she stopped?

A. I had heard fog signals regularly right along. I could not say they were exactly regular, I don't know the time they were supposed to be blown or anything like that, but I heard them now and again and then another, like that.

Q. After the boat stopped did you later hear a signal to reverse the engine?

A. Yes sir.

Q. Do you know whether or not the engines did reverse?

A. The engine did reverse.

Q. Before the engine reversed about how fast was she going when you were looking out of the starboard door?

A. I could not judge how fast she was going, but she was going pretty slow; she was very near stopped, that was practically moving, what I call stopped, going along a little bit, I could not say just how fast she was or just how slow.

Q. Were you standing there after the engine reversed?

A. Why when the engine reversed I jumped down below to open the burners up a little more to keep a full head of steam. After I got them open I started and came up the ladder and I got pretty near up the ladder when I felt a jar of something hitting.

Q. Before you went down had you noticed how the vessel acted as to whether she was making sternway?

A. Before I went down I looked out of the door and I could see the water coming forward; I could see the water coming forward toward the bow of the boat.

MR. ROBINSON: I object to all of the testimony of this witness, and move the Court to strike it and not consider it, for the reason given in my former objection at the beginning of the testimony of this witness. I have no cross examination.

(Witness excused).

Hearing adjourned.

UNITED STATES OF AMERICA,
WESTERN DISTRICT OF WASHINGTON } ss.
NORTHERN DIVISION

I, A. C. Bowman, a Commissioner of the United States District Court for the Western District of Washington, residing at Seattle, in said District, do hereby certify that the foregoing transcript from page one to page contains all of the testimony offered by the parties under the order of reference made for the purpose of taking further testimony on behalf of the Claimant in said cause.

The several witnesses, before examination, were duly sworn to testify the truth, the whole truth and nothing but the truth.

I reduced the testimony to writing in shorthand and thereafter caused the same to be transcribed in typewriting, and I certify that it is the testimony given by the witnesses at the time mentioned therein.

Proctors for the parties waived the reading and signing of the testimony given by the witnesses, stipulating that it should have the same force and effect as if so read and signed by them, when returned into court by me.

I further certify that I am not of counsel nor in any way interested in the result of said cause.

Witness my hand and official seal this 17th day of September, 1914.

[SEAL]

A. C. BOWMAN, *U. S. Commissioner.*

(Endorsed:) Filed in the U. S. District Court, Western Dist. of Washington, Northern Division, Sept. 17, 1914.

FRANK L. CROSBY, *Clerk,*
By E. M. L., *Deputy.*

Commissioners Taxable Costs (Re-reference)

Claimant:

Hearing September 10, 1914.....	\$3.00
Administering oaths to four witnesses.....	.40
Transcript above hearing, 60 folios at 10 cents.....	6.00
	<hr/>
	\$9.40

*Stimson Mill Company vs.**Claimant's Exhibit 2:*

STIMSON MILL COMPANY

No. 330

PETTY CASH VOUCHER

Date Sept. 2d, 1911

Paid to A. McKay

Paid for 14 Days at 4.50

63.00

Charge to Scow

Received the Above Amount

(Signed) A. McKay.

Paid by L S H

(Endorsed:) Claimant's Ex. 2. Filed January 13, 1914.
A. C. Bowman, U. S. Commissioner. Filed in the U. S. District Court, Western Dist. of Washington, Northern Division.
Aug. 18, 1914.

FRANK L. CROSBY, *Clerk.*By E. M. L., *Deputy.**Claimant's Exhibit 3:*

STIMSON MILL COMPANY

No. 328

PETTY CASH VOUCHER

Date Sept. 2d, 1911

Paid to R. Seeles

Paid for 6 days at 4.50

27.00

Charge to Scows

Received the Above Amount

Paid by L S H (Signed) Robt. Seeles.

(Endorsed.) Claimant's Ex. 3. Filed January 13, 1914.
A. C. Bowman, U. S. Commissioner. Filed in the U. S. District Court, Western Dist. of Washington, Northern Division.
Aug. 18, 1914.

FRANK L. CROSBY, *Clerk.*By E. M. L., *Deputy.**Claimant's Exhibit 4:*

STIMSON MILL COMPANY

No. 329

PETTY CASH VOUCHER

Date Sept. 2d 1911

Paid to B. Hopey

Paid for 7 days 4.50

31.50

Charge to Scow

Received the above amount:

Paid by L S H (Signed) B. Hopey

(Endorsed:) Claimant's Ex. 4. Filed January 13, 1914.
A. C. Bowman, U. S. Commissioner. Filed in the U. S. District Court, Western Dist. of Washington, Northern Division.
Aug. 18, 1914.

FRANK L. CROSBY, *Clerk.*

By E. M. L., *Deputy.*

Claimant's Exhibit 5:

THE MORAN COMPANY

Seattle, April 8, 1911.

Sold to Stimson Mill Co.,

Seattle, Washington.

Our No.	C-5557	Ordered by	Mr. Ives	Delivered
		Lifting Oil Car in place on scow, as per		
		directions		50.00

J

3

4/12

(Endorsed:) Claimant's Exhibit 5. Filed January 13, 1914. A. C. Bowman, U. S. Commissioner. Filed in the U. S. District Court, Western Dist. of Washington, Northern Division. Aug. 18, 1914.

FRANK L. CROSBY, *Clerk.*

By E. M. L., *Deputy.*

Claimant's Exhibit 7:

(COPY)

REPORT OF SURVEY

Accident, April 8th, 1911.

At the request of the Owners, we, the undersigned, did hold survey upon the above named vessel on the 10th day of April, 1911, and subsequent dates for the purpose of ascertaining the extent of damage alleged to have been sustained by colliding with a scow during her recent voyage from Seattle to Bellingham and return; vessel at time of survey then being on the Heffernan Dry Dock, Seattle, Wash.

By abstracts taken from the vessel's log and by report of the Master, it appears that on April 7th at about 12:02 A. M. the steamer sailed from Seattle bound to Bellingham via ports and return; that nothing worthy of note occurred until April 8th at about 5:10 A. M. during a thick fog the steamer collided with an unknown scow in tow of the Tug

"Tillicum", vessel at time of accident then being on the return voyage and about one mile south of West Pt.

After clearing the scow the steamer proceeded and arrived at her dock in Seattle about 6:10 A. M. the same day. For full particulars of the accident see ship's log and protest.

Upon making a careful examination of the vessel we found the damage to consist as follows:—

The stem and apron from the guards down to the fore-foot badly split and broken and the stem iron bent; also a number of sheets of yellow metal at stem torn and missing.

Recommendations.

We recommend that the stem and apron be cut out and renewed complete, stem iron be repaired and refastened in place.

To make it possible to renew the apron, we further recommend that the starboard planking be cut back to suitable butts and be replaced with new planks after the new apron and stem are fitted, the seams of same and hood ends be caulked and painted and filled in with cement below the water line.

The sheets of yellow metal stripped off to allow for repairs be returned again, using as much of the old as possible; the badly torn and missing sheets removed to be replaced by new.

All new and repaired parts be given two coats of approved paint; the bottom be cleaned and given one coat of copper paint.

————— :: —————

This is to certify that we, the undersigned, have attended the repairing of the above named vessel and find that all recommendations made by us and contained in the above report have been carried out and completed to our satisfaction.

A new bronze propellor is installed at this time, as per our recommendations, in report of survey dated Sept. 10th to 13th, 1910.

In our opinion, the vessel is now in a good seaworthy condition, being fit to ply in her accustomed trade.

Respectfully submitted,

Seattle, Wash.

April 8th to

17th, 1911.

(Signed) JAMES FOWLER,

Surveyor to Lloyd's Agent.

(Signed) F. WALKER,

Surveyor for Owners.

(Endorsed:) Claimant's Ex. 7. Filed February 11, 1914.
A. C. Bowman, U. S. Commissioner. Filed in the U. S. Dis-

trict Court, Western Dist. of Washington, Northern Division.
Aug. 18, 1914.

FRANK L. CROSBY, *Clerk.*

By E. M. L., *Deputy.*

Libelant's Exhibit "A":

Seattle, Wash., April 8th, 1911.

U. S. Local Inspectors,
City.

Gentlemen:—

On April 8th at about 5:10 a. m. Str. ROSALIE on her trip from Bellingham to Seattle, struck an unknown scow that was being towed in a northern direction by the tug TILLICUM, breaking stem on Str. ROSALIE.

Master of tug reported no serious damage to scow.

Accident occurred about one mile south of West Point, in fog, and Str. ROSALIE had been stopped three minutes before accident and had been backing for about two minutes.

First Mate Hanson was on watch at time of accident.

(Signed) SAMUEL BARLOW,
Master of Str. ROSALIE.

(Signed) J. D. Goss,
Chief Engineer.

(Endorsed:) Libelant's Ex. "A." Filed March 25, 1913.
A. C. Bowman, U. S. Commissioner. Filed in the U. S. District Court, Western Dist. of Washington, Northern Division.
Aug. 18, 1914.

FRANK L. CROSBY, *Clerk.*

By E. M. L., *Deputy.*

Libelant's Exhibit "B":

STATEMENT

L. F. 2

Seattle, Wash. May 1-1911

S/S Rosalie & Owners

P. S. Nav. Co.

In Account With
Heffernan Dry Dock Co.
108 Railroad Avenue.

Balance

Apr. 29 Bill Rendered 3385.32 C.F.B.
(Billhead of Heffernan Dry Dock Company)

Our No. 542

Seattle, Wash., April 29, 1911.

S. S. Rosalie and Owners.

Docking, cleaning and painting vessel.

Splitting out damaged stem and apron for entire length.

Removing planking on starboard side back to butts to allow
of installing new stem and apron.

Removing and repairing stem iron.

Making, fitting and fastening new apron and hard wood stem.

Renewing planking removed.

Calking seam butts and wood ends.

Returning copper and replacing the missing parts with new
cementing seams and painting new work with two coats as
directed.

1st Day in Dock, 319 Tons.....	63.80	
5 Lay Days	250.00	313.80

LABOR.

42 Hrs. Blacksmith	63.00	
1638½ Hrs. Carpenters	1228.90	
1465½ Hrs. Helpers	586.20	
48 Hrs. Calking	36.00	
		1914.10

MATERIAL.

58# Sheet Lead	6.96	
38' Iron Bark, 2½"x4½"	6.84	
82 Wooden Wedges	3.28	
1183' Iron Bark, 1"x2"-35'	212.94	
4 Gals Black Paint	7.00	
1 Gal White Paint	1.75	
1 Gal Anti-Fouling Paint	2.10	
20 Hrs. Dock Air	30.00	
30' Ceiling, 1"x3"	1.20	
96' Fir, #1 Clear, 8"x24"-6'	3.84	
72' Fir, #1 Clear, 12"x6"-12'	2.88	
256' Fir, #1, Clear, 8"x24"-16'	10.24	
40# Soft Steel	2.40	
1422' Fir, #1, 3"x12"-20'	56.88	
2031' Fir, #1, 3"x12"-30'	81.24	
84' Fir, #1, 6"x12"-14'	3.36	
196' Iron Bark, 3"x8"	29.40	
175# Iron, ½"	7.00	
600' Timber, 20"x20"-18'	15.00	
140' Fir, Merch., 10"x12"-14'	3.50	
2 Rolls Felt	4.00	
2 Bales Oakum	8.00	
24 Gals Woolseys Copper Paint	42.00	

1	Gal Von Hoveling #2 Paint.....	3.10	
	Stem Iron	240.00	
72#	C. S. Bolts	7.20	
430#	Galv Iron	30.10	
	Fittings	16.29	
34#	Red Lead	3.40	
450#	Galv Spikes	31.50	
1060#	Yellow Metal	233.20	
231#	Yellow Metal Nails	50.82	1157.42
			<hr/>
			3385.32

Seattle, Wash., Apr. 30 1911

THE INLAND NAVIGATION CO.

To Heffernan Dry Dock Co., Dr.

REQ. NO.

Repairs

3385.32

:
: Received O.K. :
: Prices O.K. :
: Extensions O.K. E.P.P. :
:

Total 3385.32

PLEASE DATE RECEIPT AND RETURN PROMPTLY
DO NOT DETACH ANY PAPERS.

Received July 25th 1911 from THE INLAND NAVIGATION
CO. Thirty-three hundred eighty five and 32/100 Dollars,
in full for above claim as stated.

(Sig.) HEFFERNAN DRY DOCK Co.

By J. R. McLellan, Cashier.

THE INLAND NAVIGATION COMPANY

Voucher No. 4346

D.H.Nat.Check No.....

N.B.COM.Check No.21878

Month Apr 30 1911

Amount 3385.32/100

Name Heffernan Dry Dock Co.

Address Seattle, Wash.

Hull Repairs

ROSALIE

3385.32

(Endorsed:) Libellant's Ex. "B." Filed June 6, 1913. A.
C. Bowman, U. S. Com. Filed in the U. S. District Court,
Western Dist. of Washington, Northern Division. Aug. 18,
1914.

FRANK L. CROSBY, Clerk.

By E. M. L., Deputy.

Libelant's Exhibit "C":

STEAMER "ROSALIE" PAY ROLL MONTH APRIL 1911

Time other than for Regular Crew must be entered on separate roll and show plainly occupation of person employed.

	NAME	OCCUPATION	9	10	11	12	13	14	15	16	No. of Days	Wages Per Day or Month	Amount Due	These Columns are for Office use only	SIGNATURE
1	L. White.....	Dk. Watch.....								$\frac{1}{2}$	$\frac{1}{2}$	40.00	.65		
2	J. D. Goss.....	Chf. Eng.....	1	1	1	1	1	1	1	1	8	135.00	36.00		
3	J. D. Goss.....	Chf. Eng.....	Eight days board								8	1.00	8.00		
4	Wm. Kinsey.....	1st Asst.....	1	1	1	1	1	1	1	1	8	95.00	25.35		
5	Wm. Kinsey.....	1st Asst.....	Eight days board								8	.75	6.00		
6	Fred Goen.....	Fireman.....	1	1	1	1	1	1	1	1	8	50.00	13.35		
7	Fred Goen.....	Fireman.....	Eight days board								8	.60	4.80		
8	Hendry Hendricson.....	Fireman.....	1	1	1	1	1	1	1	1	8	50.00	13.35		
9	Hendry Hendricson.....	Fireman.....	Eight days board								8	.60	4.80		
10	C Searles.....	Waiter.....	1	1	1						3	25.00	2.50		
11	L. Van Bogard.....	Watchman.....	1	1	1	1	1	1	1	1	8	60.00	16.00		
													<hr/>		
													\$130.80		

I certify this to be a true and correct copy of original payroll now on file.

C. A. CAWIE.

(Endorsed:) Libelant's exhibit "C". Filed June 6, 1913.

A. C. BOWMAN, U. S. Commissioner.

Filed in the U. S. District Court, Western Dist. of Washington, Northern Division, Aug. 18, 1914.

Frank L. Crosby, Clerk. By E. M. L., Deputy.

In the District Court of the United States for the Western
District of Washington, Northern Division.
In Admiralty.

STIMSON MILL COMPANY, A CORPORATION,	} No. 4730
<i>vs.</i>	
THE INLAND NAVIGATION COMPANY, A CORPORATION,	
	Appellant,
	Appellee.

Stipulation as to Certain Exhibits.

It is hereby stipulated, between the parties hereto, that the Clerk of this Court, in making up the apostles on appeal herein to the Circuit Court of Appeals for the Ninth Circuit, shall include therein and transmit therewith, as a part of said apostles on appeal herein, the originals of claimant's Exhibits "1" and "6."

Dated: June 7th, 1915.

HUGHES, McMICKEN, DOVELL & RAMSEY,
Proctors for Appellant.
BRONSON, ROBINSON & JONES,
Proctors for Appellee.

(Endorsed.) Filed in the U. S. District Court, Western Dist. of Washington, Northern Division. June 7, 1915. Frank L. Crosby, Clerk, by E. M. L., Deputy.

In the District Court of the United States for the Western
District of Washington, Northern Division.
In Admiralty.

STIMSON MILL COMPANY, A CORPORATION,	} No. 4730
<i>vs.</i>	
THE INLAND NAVIGATION COMPANY, A CORPORATION,	
	Appellant,
	Appellee.

Order.

Agreeably to the written stipulation between the parties hereto, this day filed herein, and it being in the opinion of the presiding Judge, undersigned, deemed proper that the Clerk of this Court in making up the apostles on appeal herein to the Circuit Court of Appeals for the Ninth Circuit shall include therein and transmit therewith as a part of the said

apostles on appeal herein the originals of claimant's Exhibits "1" and "6";

It is now by the undersigned, presiding Judge of said Court, ordered that said original Exhibits be sent up by the Clerk of this Court as part of the said apostles on appeal herein to the United States Circuit Court of Appeals for the Ninth Circuit.

Dated: June 7th, 1915.

JEREMIAH NETERER,
United States District Judge.

O. K.
BRONSON, ROBINSON & JONES.

(Endorsed:) Filed in the U. S. District Court, Western Dist. of Washington, Northern Division. June 7, 1915.
Frank L. Crosby, Clerk, by E. M. L., Deputy.

United States District Court, Western District of Washington, Northern Division.

THE INLAND NAVIGATION COMPANY, A CORPORATION,	}	Libelant,
		<i>v.</i>
THE TOW BOAT "TILlicum," HER ENGINES, BOILERS,	}	No. 4730
Etc.,		
STIMSON MILL COMPANY, A CORPORATION,		
Claimant and Cross-Libelant.		Respondent,

Filed October 22, 1914.

Libel and Cross-Libel for Damages from Collision. Both Vessels at Fault.

Libelant cites the following authorities:

The Ottawa, 30 Wallace, 269, 18 L. Ed. 165, at 167;
The J. C. Ames, 121 Fed. 918;
The Echo, 131 Fed. 630;
The Hypodame, 6 Wallace, 224, 8 L. Ed. 796;
The Cambridge, F. C. #2, 334;
The Ancon, F. C. #348;
The J. W. Everman, F. C. #7, 591;
The Ant, 10 Fed. 297;
The Excelsior, 12 Fed. 200;
The Golden Grove, 13 Fed. 691;

- McCabe v. Old Dominion S. S. Co.*, 31 Fed. 240;
The Man Lassett, 34 Fed. 419;
Larsen v. The Myrtle, 44 Fed. 781;
The St. Nicholas, 49 Fed. 679;
City of Philadelphia v. Garagnin, 62 Fed. 873;
The George W. Childs, 67 Fed. 271;
The Livingstone, 87 Fed. 777;
The Lausdowne, 105 Fed. 441;
The Dauntless, 129 Fed. 722;
The Tarpon, 132 Fed. 278;
The Sitka, 132 Fed. 864;
Bingham v. Luckenbach, 140 Fed. 326;
Wilders S. S. Co. v. Low, 112 Fed. 172;
The A. P. Skidmore, 108 Fed. 972;
The Lyndhurst, 92 Fed. 681;
The Elk, 95 Fed. 846;
The Transfer No. 25, 211 Fed. 965;
 30 Stat. L. 99 (Pilot Rule 16);
The Beaver, 197 Fed. 866, at page 868;
The Pennsylvania, 19 Wallace, 125; 22 L. Ed. 151;
The Arthur W. Palmer, 115 Fed. 417;
The Governor, F. C. 5645;
The Whitney, F. C. 17, 586;
The Dorchester, 121 Fed. 889;
The Samuel Dillaway, 98 Fed. 138, at 142;
The North Point, 205 Fed. 958;
The Ludvig Holberg, 157 U. S. 62, 39 L. Ed. 620;
The Teaser, 127 Fed. 305;
Taylor v. Harwood, F. C. 13, 294;
The Umbria, 166 U. S. 404; 41 L. Ed. 1053;
The H. B. Ranson, 152 Fed. 1001;
The Livingstone, 113 Fed. 879;
The Ashbourne, 181 Fed. 815;
The Baltimore, 8 Wall. 377, 19 L. Ed. 463;
The John H. Starin, 116 Fed. 443;
Coffin v. The Osceola, 34 Fed. 921;
New Haven Steam Boat Co. v. The Mayor, 36 Fed. 717;
The State of California, 54 Fed. 406;
The Farorita, F. C. 4, 694 Aff 18 Wall. 598, 21 L. Ed. 856;
The Cayuga, F. C. 2537;
The Providence, 98 Fed. 133;
Williamson v. Barrett, 13 How. 101, 14 L. Ed. 68;
Harris v. The Prometheus, F. C. 6, 127;
The Morning Star, F. C. No. 9817;
Cambia S. S. Co. v. Pittsburg S. S. Co., 212 Fed. 674.

Claimant and Cross-Libelant cites the following authorities:

- Quinette v. Bisso*, 136 Fed. 832;
 Article 16, International Rules;
The Louisiana, 2 Benedict, 371;
The Luray, 24 Fed. 751;
The Umbria, 166 U. S. 404;
The Martello, 153 U. S. 70;
The Providence, 98 Fed. 132;
The Niagara, 77 Fed. 329;
The Oceania Vance (No. 4046, recently decided by this Court);
 Rule II, Article 18, International Admiralty Rules;
The Providence, 98 Fed. 134;
The H. F. Dimock, 77 Fed. 230;
The Pennsylvania, 19 Wall. 125, 136;
The Britannia, 153 U. S. 130, 143;
The Bearer, 197 Fed. 869;
The Sicilian Prince, 128 Fed. 133;
The Tillie, 13 Blatch, 514;
The Singapore, 1 L. R. P. C. 381;
The Pocomoke, 150 Fed. 197;
 Rule 38 of Rules and Regulations of Board of Supervising Inspectors, Rev. Stat. 4405;
The Ping-on v. Blethen, 11 Fed. 607;
McFarland et al. v. Selby Smelting & Lead Co., 17 Fed. 253;
The Caro, 23 Fed. 735;
The Ship Shakespeare, 4 Benedict, 128;
The Steamer Hansa, 5 Benedict, 501;
Meigs & Talbot v. Steamship Northerner, 1 Wash. Ty. 87;
Jacobsen v. Dalles P. & A. Nav. Co., 106 Fed. 428;
The North Point, 205 Fed. 958;
The Ludvig Holberg, 157 U. S. 60, 71;
The Transfer No. 8, 96 Fed. 253;
The Chicago, 125 Fed. 716;
The Ashbourne, 181 Fed. 815.

Bronson & Robinson, for Libelant.

Hughes. McMicken, Dovell & Ramsey, for Claimant and Cross-Libelant.

NETERER, District Judge:

The Steamship "Rosalie," a vessel of 318.51 gross tonnage, bound from Bellingham to Seattle, at about 5:15 a. m. on the 8th day of April, 1911, collided with the Tow Boat "Tilli-

cum," a vessel of 116 tons and 87 feet in length, while proceeding from the Standard Oil Dock in Seattle, to Ballard. The "Tillicum" had lashed to her side a barge, 28 feet wide and 100 feet long, on which was loaded two oil tank cars. The "Rosalie" was owned by the Inland Navigation Company, a corporation, and the tow-boat "Tillicum" by the Stimson Mill Company. A libel and a cross-libel were filed by the respective parties to recover the damages sustained to their respective vessels. A dense fog prevailed in the vicinity of the place of collision. The usual speed of the "Rosalie" was about $9\frac{1}{2}$ knots per hour. She passed West Point Light-house about 5:05 a. m. At that time a very light fog prevailed, and the light at West Point was plainly visible. She was giving her regular fog signals, one prolonged blast of her whistle, at the usual intervals. About three minutes after passing West Point her lookout reported one whistle on the port bow, which was also heard by the mate then on duty in the pilot-house. The engine was stopped and the vessel drifted about a minute, and hearing no further response to her whistle she started ahead. Then another whistle was heard, followed by a danger signal from the tug-boat, which was answered by a like signal from the "Rosalie." At this time the lights were seen a short distance ahead. The "Rosalie," after giving the signal to go ahead, almost instantly gave the order to reverse. The tug "Tillicum" proceeded on her course in a thick fog which was prevailing. She gave her fog signals at the regular intervals, and as she proceeded along under Magnolia Bluff in the vicinity of Four Mile Rock she slowed down to about three miles an hour and endeavored to locate her position by the echoes from the bluff. After proceeding at this speed for about five minutes, having heard no whistle from other vessels, she got an echo of a long whistle from some object ahead of her. She immediately stopped her engine and drifted until her next whistle was given, when the echo from ahead was repeated and also a danger signal immediately followed, and her engine was thereupon reversed. While the vessels were in this position, the collision occurred. At the time of the collision, A W. Anderson was master and pilot of the tug-boat. Captain Charlesworth was acting as lookout from the pilot-house. The scow's bow was from 12 to 30 feet forward of the bow of the tug. The bow of the tug was at least 12 feet forward of the pilot-house.

It is contended on the part of libellant that because the tug "Tillicum" had no lookout and because she did not stop and reverse in time, and because she was carelessly navigating,

she is liable for the damage which was occasioned; while it is contended by the claimant and cross-libellant that the "Rosalie" was at fault: First, In navigating at an excessive rate of speed; Second, In navigating without due caution after hearing a steam vessel forward of her beam, whose course and position were not ascertained, and, Third, in failing to give proper signals when it became apparent that the course and intention of the vessel approaching was not understood. The claimant urges that while it did not have a lookout upon the bow of the tug, that the better point of observation was in the pilot-house, and that even though the pilot rules would ordinarily require the lookout to be on the bow of the boat, yet the custom in the operation of tug boats in and about the waters in which the collision occurred is for the lookout to be stationed just forward of the pilot-house, or in the pilot-house.

It is immaterial what the custom in the operation of the boats is, if the custom is contrary to the law. If a custom could obtain over the law, navigators could very readily overcome an act of Congress by agreeing upon a rule and adhering to it for such a time as to develop a custom. Such cannot be the law.

"The statement that it is not customary for tugs to maintain a more vigilant lookout than this tug had is immaterial. The law determines their duty in this respect and they cannot avoid it without becoming responsible for the consequences."

(The George W. Childs, 67 Fed. 72.)

It has, in admiralty, long been the established rule of due care that vessels navigating in a fog or in the night-time shall have a competent lookout.

"Steamers are required to have constant and vigilant lookouts stationed in proper places on the vessel and charged with the duty for which lookouts are required, and they must be actually employed in the performance of the duty to which they are assigned. They must be persons of suitable experience, properly stationed on the vessel and actually and vigilantly employed in the performance of that duty. Proper lookouts are competent persons other than the master and helmsman, properly stationed for that purpose on the forward part of the vessel, and the pilot-house, in the night-time, especially if it is very dark and the view is obstructed, is not the proper place."

(The Ottawa, 3 Wallace, 269.)

A lookout is a person who is specially charged with the duty of observing the lights, the sounds, the echoes, or any obstruction to navigation, with that thoroughness which the circumstances admit; his sole duty must be that with which he is charged, and he cannot divide this responsibility with the duties of master or those of any other person about the ship. *The J. C. Ames*, 121 Fed. 918; and it is the duty of the courts charged with admiralty jurisdiction to give the fullest effect to such duty when the circumstances are such as to call for its application, and every doubt as to the performance of the duty or the effect of non-performance, should be resolved against the vessel in the fault, until the contrary is shown by the testimony. *The Ariadne*, 13 Wallace, 475; *Wilders Steamship Co. v. The Low*, 112 Fed. 172; *The Hypodame*, 6 Wall. 216, 12 How. 443.

Rule 38 of the General Rules and regulations prescribed by the Board of Supervising Inspectors, authorized under Rev. Stat., Section 4405, provides:

"All passenger and ferry steamers shall, in addition to the regular pilot on watch, have one of the crew also on watch in or near the pilot-house, and this rule applies to all steamers navigating in the night-time."

This rule, it is contended, applies to the instant case, and that under it no question could arise as to the sufficiency of the lookout.

Article 29 of the regulations for preventing collisions upon harbors, rivers and inland waters, 30 Stat. at Large, page 102, provides:

"Nothing in these rules shall exonerate any vessel or the owners or masters or crew thereof, from the consequences of any neglect to keep a proper lookout, or the neglect of any precaution which may be required by the ordinary practice of seamen, or by the special circumstances of the case."

I do not think that it can be seriously contended that it was intended to supersede the long established admiralty rule requiring a competent lookout and that he shall be placed in the forward part of a forward moving vessel, and the adoption of Art. 29 by Congress would seem to remove all doubt. The further contention that a person could see and hear better from the pilot-house because of its elevated position than from the bow of the vessel, I think, is answered by the testimony in this case, which shows that the fog was general. If the testimony should disclose that the fog bank lay near the water and that the pilot-house extended above the fog, the contention might have some force; but under the

testimony, the court must find that a person could see no farther into the fog twelve or fifteen feet above the water than he could four or six feet. The bow of the scow being some distance forward of the bow of the boat, placed the master when in the pilot-house at least twenty-four feet back from the bow of the scow, and possibly forty-two feet, depending upon the testimony adopted as correct, and the court cannot say that in a dense fog such as this was, that the lookout could have a better point of observation from the pilot-house than from the bow of the boat. I think that in the towing of this scow, the lookout should have been stationed as far forward on the sailing craft as possible. The tug with its tow was a craft capable of committing injuries and its size or shape can make no exception to the rule requiring a lookout.

"If tugs will go about the harbor without lookouts, they may not expect that the court will conjecture nicely what would have happened if the lookout had been in his place doing his duty when the collision occurred."

(The Arthur M. Palmer, 115 Fed. 417.)

The safety of life and property requires that a tug in towing a scow in the manner shown with the bow of the scow from twelve to thirty feet forward of the bow of the tug, in a dense fog, must have a lookout stationed farther forward than in the pilot-house on the tug. In a dense fog a short distance to the eye or ear may mean much, and a few feet might save many lives or much property. Courts must, therefore, in a harbor where many vessels may be afloat, rigidly enforce the safety provisions of law or admiralty rules.

Article 16 of regulations for sailing crafts upon inland waters, 30 Stat. at Large, page 99, provides:

"A steam vessel hearing apparently forward of her beam the fog signal of a vessel, the position of which is not ascertained, shall, so far as the circumstances of the case admit, stop her engines, and navigate with caution until the danger of collision is over."

I think it may be fairly assumed that the claimant, when it heard the echo of the object forward, did stop its engine and navigate with caution, but I am not prepared to say that the echo was heard or the engine stopped and reversed in time to stop the forward motion of the tug. The libellant, upon hearing the whistle, immediately stopped its engine and proceeded with caution, but I think was not warranted, under the circumstances, in starting forward again at the time that it did without first locating the whistle that had been heard.

The Hypodame, 6 Wall., 216; and while the forward motion was only three or four revolutions of the engine, yet it was of sufficient force to add to the momentum which the *Rosalie* then had to the speed that had been given prior to the stopping of the engine, and the reversing of the engine after the alarm signal was given was too late to stop the forward movement of the boat prior to the collision. I believe, from the testimony in this case, that the engines of both crafts were reversed, but that they had not operated for a sufficient length of time to stop the forward movement of either of the crafts, and that both boats were still going forward at the time of the collision.

"The liability for damage is upon the ship or ships whose fault causes the injury, but when, as in this case, a ship at the time of the collision is in actual violation of a statutory rule intended to prevent collisions, it is no more than a reasonable presumption that the fault, if not the sole cause, was at least a contributing cause to the disaster. In such a case the burden rests upon the ship to show, not merely that her fault might not have been one of the causes, or that it probably was not, but that it could not have been."

(*The Pennsylvania*, 19 Wallace, 125).

This rule applies where a proper lookout is not provided. *The George W. Childs*, *supra*; *The Arthur M. Palmer*, *supra*; *McCabe v. Old Dominion Steamship Co.*, 31 Fed. 253; *The Lydhurst*, 92 Fed. 681; as well as violations of other recognized rules of navigation.

"It is claimed that even if the *Selja* was at fault in not obeying Rule 16, such fault was not a contributing cause of the collision. The law is that she must show not only that probably her fault did not contribute to the disaster, but that it could not have done so."

(*The Beaver*, 197 Fed. 866).

Both of these vessels were moving vessels. I think both were at fault. The "*Tillicum*" did not have a proper lookout, and the "*Rosalie*" did not navigate with due caution after hearing a steam vessel forward of her beam. Both vessels having violated recognized rules of navigation, and not having shown that such fact did not contribute to the disaster, must be held to have contributed to the collision.

The damage to the "*Rosalie*" is shown to be \$5116.12; to the "*Tillicum*" and scow, \$597.30, a total loss of \$5713.42, which should be equally divided. A decree may be presented

for libelant in the sum of \$2856.71; each party to pay one-half the costs.

JEREMIAH NETERER, *Judge.*

Endorsed: Filed in the U. S District Court, Western Dist. of Washington, Northern Division. Oct. 22, 1914. Frank L. Crosby, Clerk. By E. M. L., Deputy.

United States District Court, Western District of Washington,
Northern Division.

THE INLAND NAVIGATION COMPANY, A CORPORATION,	} Libelant,	} No. 4730
<i>vs.</i>		
THE TOW BOAT "TILlicum", HER ENGINES, BOILERS,	} Respondent,	
etc.,		
STIMSON MILL COMPANY, A CORPORATION,	} Claimant and Cross-Libelant.	

Final Decree.

This cause having been duly referred to a Commissioner; and the testimony taken by him returned into Court, and argument had thereon; and the Court, after due deliberation, having filed its memorandum decision on October 22d, 1914, in which the Court found and now finds that both parties were at fault and the damages to the "Rosalie" were shown to be \$5116.12, and to the "Tillicum" and scow \$597.30, a total loss of \$5713.42, which should be equally divided, and a decree presented for libelant in the sum of \$2856.71, each party to pay one-half of the costs;

NOW, THEREFORE, it is hereby Ordered, Adjudged and Decreed that the libelant, Inland Navigation Company, a corporation, have and recover of and from the Stimson Mill Company, a corporation, and from C. D. Stimson and Thomas D. Stimson, sureties on the stipulation filed herein for the release of the respondent vessel, the said sum of \$2856.71, together with such costs, if any, as the libelant shall have been found to have lawfully taxed in excess of one-half of the entire cost of this cause, when the same shall have been taxed; and

IT IS FURTHER ORDERED that unless an appeal be taken from this decree within the time limited by the rules and practice of this court, and unless the said Stimson Mill Company, a corporation, and the said C. D. Stimson and Thomas

D. Stimson, stipulators on the release bond of the said Tug "Tillicum" given herein, do cause the engagement of their said stipulation to be performed within the time provided by law and the rules of this court, or on the first day of jurisdiction thereafter, that the said stipulators shall show cause why execution should not issue against them, their lands, goods, and chattels for the amount of this decree, according to their said stipulation.

ORDERED AND DECREED this 26th day of October, 1914.

JEREMIAH NETERER,
United States District Judge.

Approved as to form:
E. C. H.,
Proctors for Claimant and Cross-libelant.

Endorsed: Final Decree. Filed in the U. S. District Court, Western Dist. of Washington, Northern Division. Oct. 26, 1914. Frank L. Crosby, Clerk. By Ed. M. Lakin, Deputy.

In the District Court of the United States for the Western
District of Washington, Northern Division.

THE INLAND NAVIGATION COMPANY, A CORPORATION,	} Libelant,	} No. 4730
<i>vs.</i>		
THE TOW BOAT "TILlicum", HER ENGINES, BOILERS,	} Respondent,	
etc.,		
STIMSON MILL COMPANY, A CORPORATION,	} Claimant and Cross-Libelant.	

In Admiralty.

Memorandum of Claimant and Cross-Libelant's Costs and Disbursements.

To the Clerk of the Above Entitled Court:

You will please tax the following costs and disbursements in favor of the claimant and cross-libelant, Stimson Mill Company, and against the libelant, The Inland Navigation Company, a corporation, viz:

Clerk's fees	\$ 14.10
Marshal's fees	5.12
United States Commissioner's fees.....	53.50
Proctor's fees	20.00

Witness fees:

E. W. Charlesworth,	3 days & mileage.....	9.60	
A. W. Anderson,	2 " " "	6.40	
W. A. Rause,	1 day " "	3.20	
E. T. Connell,	1 " " "	3.20	
Hans Nederlie,	1 " " "	3.20	
Andrew M. McKay,	2 days " "	6.40	
N. H. Jacoby,	1 day " "	3.20	
Fred McFarland,	1 " " "	3.20	
Matthew H. Sandstrom,	1 " " "	3.20	
John L. Hubbard,	1 " " "	3.20	
Charles Redmond,	1 " " "	3.20	
Charles Martin,	1 " " "	3.20	
R. A. Turner,	1 " " "	3.20	
L. E. Smith,	1 " " "	3.20	
J. C. Ackles,	1 " " "	3.20	
I. H. Biggs,	1 " " "	3.20	\$ 64.00
			<hr/>
			\$156.72

HUGHES, McMICKEN, DOVELL & RAMSEY,
Proctors for Claimant and Cross-Libelant.

UNITED STATES OF AMERICA,

WESTERN DISTRICT OF WASHINGTON.

} ss.

H. J. RAMSEY, being duly sworn, deposes and says: That he is one of the Proctors for Claimant and Cross-Libelant in the above entitled cause; and as such has knowledge of the facts herein set forth; that the items in the above memorandum contained are correct to the best of this deponent's knowledge and belief, and that the said disbursements have been necessarily incurred in the said cause and that the services charged herein have been actually and necessarily performed as herein stated.

H. J. RAMSEY.

Subscribed and sworn to before me this 24th day of October, A. D. 1914.

[SEAL]

JOHN P. GARVIN,
*Notary Public in and for the State of
 Washington, residing at Seattle.*

Copy of within Cost Bill received, and due service of same acknowledged this 26th day of October, 1914.

BRONSON & ROBINSON,
Proctors for Libelant.

Endorsed: Memorandum of Claimant and Cross-Libellant's Costs and Disbursements. Filed in the U. S. District Court, Western Dist. of Washington, Northern Division. Oct. 26, 1914. Frank L. Crosby, Clerk. By E. M. L., Deputy.

United States of America.

District Court of the United States, Ninth Circuit, Western District of Washington.

THE INLAND NAVIGATION COMPANY, A CORPORATION,	} Libellant,	} No. 4730
<i>vs.</i>		
THE TOW BOAT "TILlicum,"	} Respondent,	
etc.,		
STIMSON MILL COMPANY, A CORPORATION,	Claimant and Cross-Libellant.	

Memorandum of Costs and Disbursements to Be Taxed Against Claimant.

DISBURSEMENTS.

	Amount Claimed	Amount Allowed
Clerk's Fees	\$ 22.00	\$ 22.00
Marshal's Fees	2.50	2.50
Attorney's Fees	20.00	20.00
Commissioner's Fees	48.50	48.50
Witness Fees:		
L. Bongojard, Seattle, Wn., 1 day, 2 miles	3.20	3.20
A. Hanson, Seattle, Wn..... " "	3.20	3.20
W. L. Kinsey, Seattle, Wn., " "	3.20	3.20
Harry Gates, Seattle, Wn., " "	3.20	3.20
H. M. Hendrickson, Seattle, Wn. " "	3.20	3.20
Joshua Green, Seattle, Wn., " "	3.20	3.20
James Fowler, Seattle, Wn., " "	3.20	3.20
C. H. J. Stoltenberg, Seattle, Wn. " "	3.20	3.20
Frank Walker, Seattle, Wn., " "	3.20	3.20
David Hollywood, Seattle, Wn. " "	3.20	3.20
Total	\$125.00	

Taxed October, 1914.

Clerk.

UNITED STATES OF AMERICA, }
WESTERN DISTRICT OF WASHINGTON. } ss.

J. S. ROBINSON, being duly sworn, deposes and says: That he is the Proctor for the Libelant in the above entitled cause; and as such has knowledge of the facts herein set forth; that the items in the above memorandum contained are correct to the best of this deponent's knowledge and belief, and that the said disbursements have been necessarily incurred in the said cause and that the services charged herein have been actually and necessarily performed as herein stated.

J. S. ROBINSON.

Subscribed and sworn to before me, this 23d day of October, 1914.

W. L. GRILL,
*Notary Public in and for the State of Washington,
residing at Seattle, King County, Therein.*

To Hughes, McMicken, Dovell & Ramsey,
Proctors for Claimant and Cross-Libelant,
Seattle, Washington.

You will please take notice that on Monday, the day of October, 1914, at the hour of o'clock M., application will be made to the Clerk of said Court to have the within memorandum of costs and disbursements taxed pursuant to the rule of said Court, in such case made and provided.

BRONSON & ROBINSON,
Proctors for Libelant.

Due service of the within and foregoing Memorandum of Costs and Disbursements and notice of the taxation thereof by the receipt of a true copy thereof, hereby is admitted in behalf of all parties entitled to such service by the Rules of Court, this Oct. 23, 1914.

HUGHES, McMICKEN, DOVELL & RAMSEY,
Proctors for Claimant and Cross-Libelant.

Endorsed: Memorandum of Costs and Disbursements. Filed in the U. S. District Court, Western Dist. of Washington, Northern Division. Oct. 26, 1914. Frank L. Crosby, Clerk. By Ed. M. Lakin, Deputy.

In the District Court of the United States for the Western
District of Washington, Northern Division.
In Admiralty.

THE INLAND NAVIGATION COMPANY, A CORPORATION,	}	No. 4730
Libelant,		
<i>vs.</i>		
THE TOW BOAT "TILlicum", HER ENGINES, BOILERS,	}	
etc.,		
STIMSON MILL COMPANY, A CORPORATION,		
Claimant and Cross-Libelant.		

Notice of Appeal.

To the Clerk of the above entitled Court, and to the above
named Libelant, The Inland Navigation Company, a cor-
poration, and to Bronson & Robinson, its Proctors:

Comes now the Stimson Mill Company, a corporation,
claimant and cross-libelant herein, and hereby appeals to
the United States Circuit Court of Appeals for the Ninth
Circuit, from the judgment and decree, and the whole thereof,
rendered and entered in the above entitled cause on the 26th
day of October, 1914.

Dated this 22d day of April, 1915.

HUGHES, McMICKEN, DOVELL & RAMSEY,
Proctors for Stimson Mill Company,
Claimant & Cross Libelant.

Endorsed: Notice of Appeal. Filed in the U. S. District
Court, Western Dist. of Washington, Northern Division. Apr.
22, 1915. Frank L. Crosby, Clerk. By E. M. Lakin, Deputy.

In the District Court of the United States for the Western
District of Washington, Northern Division.
In Admiralty.

THE INLAND NAVIGATION COMPANY, A CORPORATION,	}	No. 4730
Libelant,		
<i>vs.</i>		
THE TOW BOAT "TILlicum", HER ENGINES, BOILERS,	}	
etc.,		
STIMSON MILL COMPANY, A CORPORATION,		
Claimant and Cross-Libelant.		

Acceptance of Service.

The Inland Navigation Company, libelant herein, hereby
acknowledges due and proper service of the claimant and

cross-libelant's notice of appeal in the above entitled matter this 22d day of April, after the filing of the original of said notice of appeal in the office of the clerk of the District Court of the United States for the Western District of Washington, Northern Division.

BRONSON, ROBINSON & JONES,
Proctors for said Libelant.

Endorsed: Acceptance of Service. Filed in the U. S. District Court, Western Dist. of Washington, Northern Division. Apr. 22, 1915. Frank L. Crosby, Clerk. By E. M. Lakin, Deputy.

In the District Court of the United States for the Western
District of Washington, Northern Division.
In Admiralty.

THE INLAND NAVIGATION COMPANY, A CORPORATION,	}	Libelant,
<i>vs.</i>		
THE TOW BOAT "TILlicum", HER ENGINES, BOILERS,	}	No. 4730
etc.,		
STIMSON MILL COMPANY, A CORPORATION,	}	Respondent,
Claimant and Cross-Libelant.		

Order Allowing Appeal.

On motion for the proctors for the claimant and cross libelant herein, it appearing to the Court that a notice of appeal from the judgment and decree of the Court herein having been duly filed, it is hereby ORDERED that the said appeal be and it is hereby allowed.

Done in open Court this 22d day of April, A. D. 1915.

JEREMIAH NETERER, *Judge.*

Endorsed: Order Allowing Appeal. Filed in the U. S. District Court, Western Dist. of Washington, Northern Division. Apr. 22, 1915. Frank L. Crosby, Clerk. By Ed. M. Lakin, Deputy.

In the District Court of the United States for the Western
District of Washington, Northern Division.
In Admiralty.

THE INLAND NAVIGATION COMPANY, A CORPORATION,	}	Libelant,
<i>vs.</i>		
THE TOW BOAT "TILlicum", HER ENGINES, BOILERS,	}	No. 4730
etc.,		
STIMSON MILL COMPANY, A CORPORATION,	}	Respondent,
		Claimant and Cross-Libelant.

Bond for Costs on Appeal.

Know All Men by These Presents:

That we, the Stimson Mill Company, a corporation, claimant and cross libelant in the above entitled cause, as principal, and J. F. Ives and Thos. D. Stimson, as sureties, are held and firmly bound unto The Inland Navigation Company, a corporation, libelant herein, in the sum of Two Hundred Fifty (\$250.00) Dollars, to be paid to the said obligee, to which payment, well and truly to be made, we hereby bind ourselves, our heirs, successors, administrators and assigns, jointly and severally, firmly by these presents.

Signed, sealed and dated at Seattle this 22nd day of April, A. D. 1915.

THE CONDITION OF THIS OBLIGATION IS SUCH THAT

WHEREAS, on the 26th day of October, 1914, at a District Court of the United States for the Western District of Washington, Northern Division, in the above entitled cause, a decree was entered against the above named claimant and cross libelant and its stipulators, from which decree the said claimant and cross libelant has taken an appeal to the United States Circuit Court of Appeals for the Ninth Circuit;

NOW, THEREFORE, if the said claimant and cross libelant, as such appellant, shall prosecute its appeal to effect, and pay the costs if the appeal is not sustained, then this obligation shall be void, otherwise to be and remain in full force and effect, and execution issue thereon for the amount of said costs, not exceeding Two Hundred Fifty (\$250.00) Dollars, at the instance of any person interested as aforesaid.

STIMSON MILL COMPANY,

Claimant and Cross Libelant.

By HUGHES, McMICKEN, DOVELL & RAMSEY,

Its Proctors.

J. F. IVES.

THOS. D. STIMSON.

UNITED STATES OF AMERICA, }
 WESTERN DISTRICT OF WASHINGTON. } ss.

J. F. IVES and THOS. D. STIMSON, being duly sworn, deposes and says each for himself, that he is a resident of the Western District of Washington, Northern Division, that he is worth the sum of Two Hundred Fifty Dollars (\$250.00), over and above all his just debts and liabilities.

J. F. IVES,
 THOS. D. STIMSON.

Subscribed and sworn to before me this 22nd day of April, 1915.

[SEAL]

E. B. BRYNER,
*Notary Public in and for the State of
 Washington, residing at Seattle.*

The within and foregoing bond for costs on appeal herein is hereby approved.

Dated at Seattle, Washington, this 22 day of April, 1915.

JEREMIAH NETERER, *Judge.*

The Inland Navigation Company, a corporation, libellant herein, hereby waives notice of the filing of the foregoing bond and assents to the sufficiency of the sureties thereon.

Dated, April 22, 1915.

BRONSON, ROBINSON & JONES,
Proctors for said Libellant.

Endorsed: Bond for Costs on Appeal. Filed in the U. S. District Court, Western Dist. of Washington, Northern Division. Apr. 22, 1915. Frank L. Crosby, Clerk. By Ed. M. Lakin, Deputy.

In the United States Circuit Court of Appeals for the Ninth
 Circuit.
 In Admiralty.

STIMSON MILL COMPANY, A CORPORATION,	}	Appellant,	}
<i>vs.</i>			} No.
THE INLAND NAVIGATION COMPANY, A CORPORATION,		Appellee.	

Citation on Appeal.

THE UNITED STATES OF AMERICA, }
 WESTERN DISTRICT OF WASHINGTON. } ss.
 NORTHERN DIVISION. }

The President of the United States of America to The Inland Navigation Company, a corporation, appellee herein,
 GREETING:

You are hereby cited and admonished to be and appear at a United States Circuit Court of Appeals to be holden at the City of San Francisco, California, in and for the Ninth Circuit, within thirty (30) days from the date hereof, pursuant to an appeal of the appellant herein, from a decree of the United States District Court for the Western District of Washington, Northern Division, in a certain cause in admiralty, wherein The Inland Navigation Company, a corporation, is libellant, and The Tow Boat "Tillicum", her engines, boilers, etc., respondent, and Stimson Mill Company, a corporation, claimant and cross libellant, to show cause, if any you have, why the decree rendered against the claimant and cross libellant in said cause, as in said decree mentioned, should not be corrected and why speedy justice should not be shown the parties in that behalf.

WITNESS THE HONORABLE EDWARD D. WHITE, Chief Justice of the United States, the 22d day of April, 1915, and the Independence of the United States the One Hundredth and Thirty-ninth.

[DIST. COURT SEAL]

JEREMIAH NETERER,

*Judge of the District Court of the United States for
 the Western District of Washington, Northern Division.*

Endorsed: Citation on Appeal. Filed in the U. S. District Court, Western Dist. of Washington, Northern Division. Apr. 22, 1915. Frank L. Crosby, Clerk. By E. M. Lakin, Deputy.

In the United States Circuit Court of Appeals for the Ninth Circuit.

In Admiralty.

STIMSON MILL COMPANY, A CORPORATION,	Appellant,	} No.
vs.		
THE INLAND NAVIGATION COMPANY, A CORPORATION,	Appellee.	

Admission of Service.

The appellee herein, The Inland Navigation Company, a corporation, admits service this 22nd day of April, 1915, of

citation issued this date in the above entitled cause, and waives all irregularities, if any, in the manner of service.

BRONSON, ROBINSON & JONES,

Proctors for The Inland Navigation Company, Appellee.

Endorsed: Admission of Service. Filed in the U. S. District Court, Western Dist. of Washington, Northern Division. May 10, 1915. Frank L. Crosby, Clerk. By E. M. L., Deputy.

In the District Court of the United States for the Western District of Washington, Northern Division.

THE INLAND NAVIGATION COMPANY, A CORPORATION,	} Libelant,	} No. 4730
<i>vs.</i>		
THE TOW BOAT "TILlicum", HER ENGINES, BOILERS,	} Respondent,	}
etc.,		
STIMSON MILL COMPANY, A CORPORATION,		
Claimant and Cross-Libelant.		

Assignments of Error.

Now comes the Stimson Mill Company, a corporation, Claimant of the above named Tow Boat "Tillicum", her engines, boilers, etc., and Cross-Libelant, and by its proctors, Hughes, McMicken, Dovell & Ramsey, shows that in the records and proceedings in said cause and in the final decree entered therein there is manifest error in the following particulars:

FIRST.—The court erred in holding that the Tow Boat "Tillicum" was at fault for not having an additional lookout stationed at her bow.

SECOND.—The court erred in holding that the lookout maintained by the Tow Boat "Tillicum" in her pilot house was not a proper and sufficient lookout.

THIRD.—The court erred in holding that the Tow Boat "Tillicum" and her barge had not overcome their forward motion at and prior to the collision of the "Rosalie" therewith.

FOURTH.—The court erred in holding that the Tow Boat "Tillicum" and her barge were not making sternway at the time of the collision.

FIFTH.—The court erred in holding that the failure of the "Tillicum" to maintain a lookout at her bow was a fault contributing to the collision.

SIXTH.—The court erred in holding that the improper navigation of the steamship "Rosalie" was not the sole cause of said collision.

SEVENTH.—The court erred in refusing to hold that the burden of proof was upon the “Rosalie” to show that her fault was not the sole cause of said collision.

EIGHTH.—The court erred in finding and decreeing that damages should be divided.

NINTH.—The court erred in finding the damages sustained by the “Rosalie” were grossly in excess of her actual damage.

TENTH.—The court erred in refusing to award to the Cross-Libelant its full damages and costs.

HUGHES, McMICKEN, DOVELL & RAMSEY,
Proctors for Appellant.

Copy of within Assignments of Error received, and due service of same acknowledged this 4th day of June, 1915.

BRONSON, ROBINSON & JONES,
Proctors for Libelant.

(Endorsed:) Assignments of Error. Filed in the U. S. District Court, Western Dist. of Washington, Northern Division. June 7, 1915. Frank L. Crosby, Clerk. By E. M. L., Deputy.

In the District Court of the United States for the Western
District of Washington, Northern Division.
In Admiralty.

THE INLAND NAVIGATION COMPANY, A CORPORATION,	}	Libelant,
<i>vs.</i>		
THE TOW BOAT “TILlicum”, HER ENGINES, BOILERS,	}	No. 4730
etc.,		
STIMSON MILL COMPANY, A CORPORATION,		
Claimant and Cross-Libelant.		

Respondent,

Stipulation as to Record.

IT IS HEREBY STIPULATED, between the parties hereto, that the apostles on appeal herein to the Circuit Court of Appeals for the Ninth Circuit shall include the following:

Libel, filed October 5, 1911;

Claim of Stimson Mill Co., filed October 6, 1911;

Bond to United States Marshal for release of vessel,
filed October 6, 1911;

Answer and Cross-libel, filed April 13, 1912;

Claim by President of owner, filed April 16, 1912;

Bond to obtain release of vessel arrested under cross-
libel, filed April 16, 1912;

Answer to cross-libel, filed January 24, 1913;

Order of reference, filed December 30, 1912;
Testimony, with certificate, filed August 18, 1914;
Motion for leave to take further testimony, filed September 2, 1914;
Order granting leave to take further testimony, filed September 8, 1914;
Further testimony, with certificate, filed Sept. 17, 1914.
Claimant's Exhibits "1", "2", "3", "4", "5", "6", and "7";
Libelant's Exhibits "A", "B" and "C";
Stipulation as to Claimant's Exhibits "1" and "6", filed June 7th, 1915;
Order as to Claimant's Exhibits "1" and "6", filed June 7th, 1915;
Opinion, filed October 22, 1914;
Decree, filed October 26, 1914;
Memorandum of costs of claimant and cross-libelant, filed October 26, 1914;
Memorandum of costs of libelant, filed October 26, 1914;
Notice of appeal, filed April 22, 1915;
Acceptance of service of notice of appeal, filed April 22, 1915;
Order allowing appeal, filed April 22, 1915;
Bond for costs on appeal, filed April 22, 1915;
Citation on appeal, filed April 22, 1915;
Admission of service of citation, filed May 10, 1915;
Assignment of Errors, filed June 7, 1915;
This Stipulation, filed June 7th, 1915;

which comprise all the papers, exhibits, depositions and other proceedings which are necessary to the hearing of said cause upon appeal herein to the United States Circuit Court of Appeals for the Ninth Circuit, and that no other paper or proceeding than those above mentioned need be included by the Clerk of the United States District Court for the Western District of Washington, Northern Division, in making up the said apostles on appeal herein.

Dated: June 7, 1915.

HUGHES, McMICKEN, DOVELL & RAMSEY,
Proctors for Appellant.

BRONSON, ROBINSON & JONES,
Proctors for Appellee.

Endorsed: Filed in the U. S. District Court, Western Dist. of Washington, Northern Division. June 7, 1915.
Frank L. Crosby, Clerk, by E. M. L., Deputy.

THE INLAND NAVIGATION COMPANY, A CORPORATION,	<i>vs.</i>	STIMSON MILL COMPANY, A CORPORATION,
Libellant,		Claimant and Cross-Libellant.
		Respondent,
THE TOW BOAT "TILlicum," HER ENGINES, BOILERS, etc.,		

No. 4730

United States of America, }
Western District of Washington, } ss.

I further certify the following to be a full, true and correct statement of all expenses, costs, fees and charges incurred and paid in my office by or on behalf of the claimant and appellant for making record, certificate or return to the United States Circuit Court of Appeals for the Ninth Circuit in the above entitled cause, to-wit:

Clerk's Fee (Sec. 828 R. S. U. S.) for making record, certificate of return, 660 folios at 15c.....	\$ 99.00
Certificate of Clerk to transcript of record, 4 folios at 15c60
Seal to said Certificate.....	.20
Certificate of Clerk to Original Exhibits, 3 folios at 15c....	.45
Seal to said Certificate.....	.20
Statement of cost of printing said transcript of record, collected and paid.....	219.00
Total	\$319.45

I hereby certify that the above cost for preparing and certifying record, amounting to \$319.45, has been paid to me by Messrs. Hughes, McMicken, Dovell & Ramsey, Proctors for Claimant and Appellant.

I further certify that I hereto attach and herewith transmit the original citation issued in this cause.

IN WITNESS WHEREOF, I have hereto set my hand and affixed the seal of said District Court at Seattle, in said District, this 18th day of June, 1915.

(Seal)

FRANK L. CROSBY,
Clerk United States District Court.